TEXAS REGISTER

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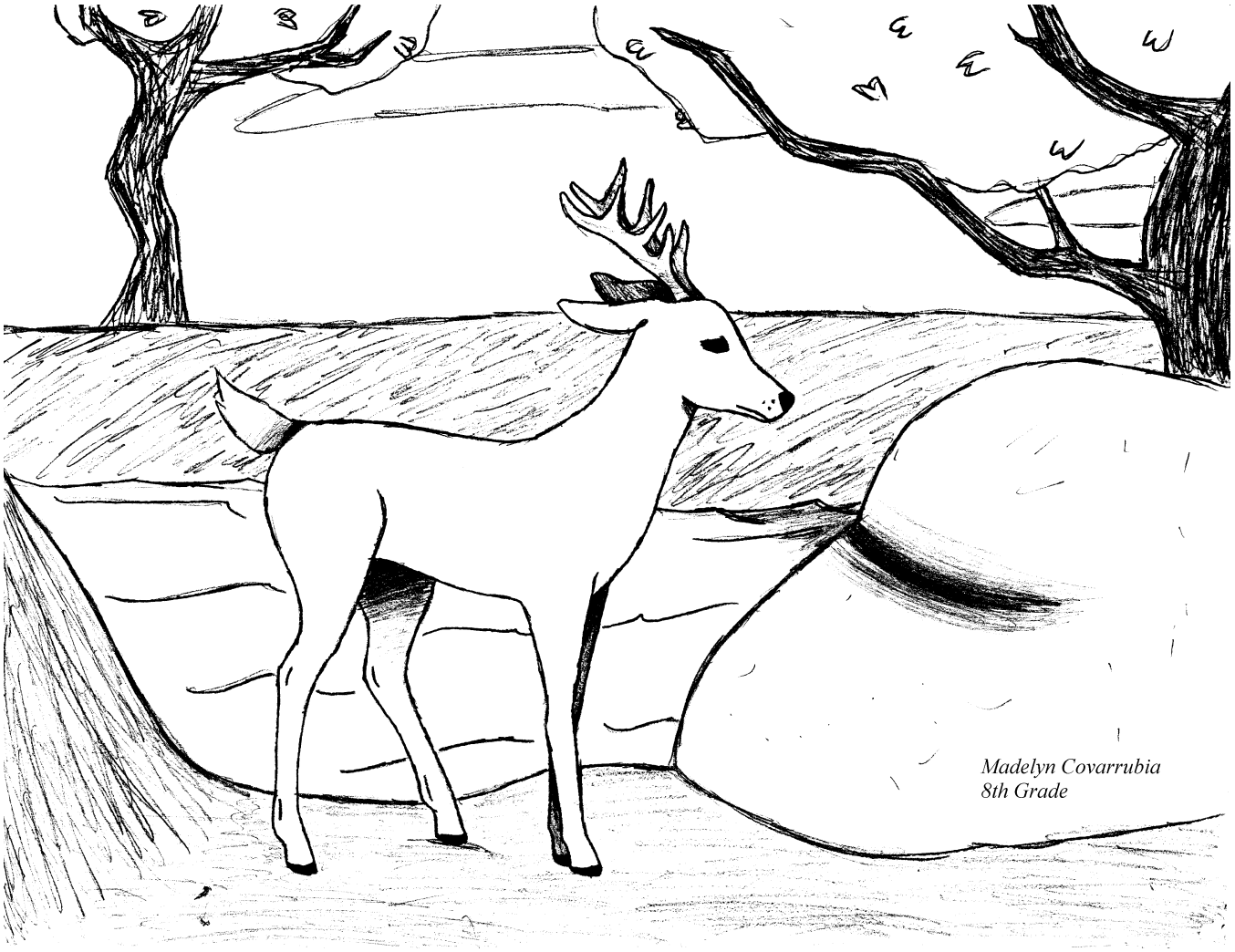

Madelyn Covarrubia
8th Grade

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for December 15, 2006

Appointed to the Texas Racing Commission for a term to expire February 1, 2007, David Gregorio Cabrales of Dallas (replacing Louis Sturns of Dallas who resigned).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2012, Harry L. Tindall of Houston (Reappointment).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2012, Earl L. Yeakel III of Austin (Reappointment).

Appointed to the Commission on Uniform State Laws for a term to expire September 30, 2012, Marilyn E. Phelan of Levelland (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, Joe Bontke of Houston (Replacing Thomas Justis of Granbury whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, Daphne Brookins of Fort Worth (Replacing Kara Anglin of Caldwell whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, David A. Fowler of Katy (Replacing Anthony Jones of Dallas whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, Roland Guzman of San Antonio (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, Brian D. Shannon of Lubbock (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2007, Shane Whitehurst (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Aaron W. Bangor of Austin (Replacing Doug Grady of Fort Worth whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Margaret "Peggy" A. Cosner of Waco (Replacing Peter Grojean of San Antonio whose term expired).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Judy C. Scott of Dallas (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Nancy Kay Shugart of Austin (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Kathy S. Strong of Garrison (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2008, Tommie Grace Wells of Fort Worth (Replacing Ed Looby of Alvin whose term expired).

Designating Judy C. Scott of Dallas as Presiding Officer of the Governor's Committee on People with Disabilities for a term at the pleasure of the Governor. Ms. Scott is replacing Thomas Justis as presiding officer. Mr. Justis no longer serves on the committee.

Rick Perry, Governor

TRD-200606820

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Opinions

Opinion No. GA-0492

The Honorable D. Matt Bingham

Smith County Criminal District Attorney

Smith County Courthouse

100 North Broadway, 4th Floor

Tyler, Texas 75702

Re: Whether a proposed Smith County incentive bonus plan for certain county employees complies with article III, section 53 of the Texas Constitution (RQ-0486-GA)

S U M M A R Y

The Incentive Plan proposed by the Smith County Commissioners Court for certain county employees does not contravene article III, section 53 of the Texas Constitution unless employees are provided bonuses for work rendered before the plan's adoption. The fact that the proposed plan stipulates that bonus awards are within the Commissioners Court's discretion does not itself render the plan unconstitutional.

The opinion process cannot determine whether the commissioners court would abuse its discretion or violate constitutional equal protection guarantees if employees' eligibility for benefits under the proposed plan is contingent on their department heads' actions.

Opinion No. GA-0493

The Honorable Robert E. Talton

Chair, Urban Affairs Committee

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether an "Affidavit of Right of Possession or Control" may be used only by a member of the registered vehicle owner's immediate family (RQ-0492-GA)

S U M M A R Y

The Texas Department of Transportation reasonably has construed title 43, sections 18.82(3) and 18.92(a)(3)(G) of the Texas Administrative Code to permit individuals who are not members of a vehicle owner's immediate family to claim the stored vehicle using an Affidavit of Right of Possession and Control. A licensed vehicle storage facility may release a stored vehicle to an individual who is not a member of the vehicle owner's immediate family but who presents a properly completed Affidavit and who otherwise complies with section 18.92(a)(3).

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200606837
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 19, 2006

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.14

The Texas Medical Board is renewing the effectiveness of the emergency adoption of new §163.14, for a 60-day period. The text of the new section was originally published in the September 15, 2006 issue of the *Texas Register* (31 TexReg 7775).

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606678
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Original Effective Date: August 28, 2006
Expiration Date: February 23, 2007
For further information, please call: (512) 305-7016

♦ ♦ ♦

PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 70. COST OF COPIES OF PUBLIC INFORMATION

1 TAC §§70.1 - 70.4, 70.6 - 70.8, 70.10, 70.11

The Office of the Attorney General (the "OAG") proposes amendments to 1 TAC §§70.1 - 70.4, 70.6 - 70.8, and 70.10, 70.11, relating to a governmental body's charges for providing copies of public information under Chapter 552 of the Texas Government Code (The Public Information Act). The primary purpose of the proposed amendments is to implement Senate Bill ("SB") 452 and SB 727, enacted by the 79th Legislature, Regular Session (2005), which amend Chapter 552 by transferring all duties relating to the Public Information Act to the OAG. The proposed amendments will also implement several changes recommended by the Open Records Steering Committee.

Proposed amendments to §§70.1, 70.2, 70.4, 70.7, 70.8, 70.10, and 70.11 replace the Texas Building and Procurement Commission (the "Commission") with the OAG pursuant to SB 452 and SB 727. These changes, along with those minor, nonsubstantive, grammatical or editorial changes which do not change the meaning of the rules, are not discussed below.

Section 70.2 (Definitions). Amended §70.2(7) and §70.2(9) to replace the outdated references to the Commission's old rules with the OAG's current rules.

Section 70.3 (Charges for Providing Copies of Public Information). Amended §70.3(a) and §70.3(b)(2)(L) replaces the outdated references to the Commission's old rules with the OAG's current rules. Amended §70.3(d)(1) clarifies that a governmental body's labor charges can include costs associated with the manipulation of data. Amended §70.3(l) clarifies that a governmental body may recover a transaction fee charged by a credit card company from a requestor who elects to pay for copies of public information with a credit card. New §70.3(m) provides that the list of charges in §70.3 are subject to periodic reevaluation and update.

Section 70.6 (Format for Copies of Public Information). Amended §70.6(a) clarifies that a governmental body must provide copies of public information in any requested computer-compatible format if the information is electronically stored and the governmental body has the capability to provide the information in that format at no greater expense or time.

Section 70.7 (Estimates and Waivers of Public Information Charges). Amended §70.7(a) replaces the outdated reference to the Commission's old rules with the OAG's current rules. Amended §70.7(a) also clarifies that an itemized statement of estimated charges must be provided to the requestor, if the estimated charges exceed $40, before the governmental body makes copies of the requested information.

Section 70.8 (Processing Complaints of Overcharges). New §70.8(b)(4) would allow the OAG to dismiss any complaint filed under §70.8(a) if the complaint does not contain the requisite information or was not submitted to the OAG within the specified timeframe. The proposed amendments would also delete §70.8(i), which stated that the Commission did not possess the authority to determine if a governmental body had acted in good faith in computing charges for public information. By this amendment, the OAG now claims the authority to determine if a governmental body acted in good faith when computing such charges.

Section 70.10 (The Attorney General Charge Schedule). Amended §70.10(10) and §70.10(11) replace the outdated references to the Commission's old rules with the OAG's current rules.

Mr. Greg Simpson, Division Chief of the Open Records Division of the OAG, has determined that for the first five year period in which the proposed rules and amendments are in effect, there will be no anticipated fiscal implication to any state or local government entity.

Mr. Simpson also has determined that for the first five-year period in which the proposed rules and amendments are in effect, there will be no adverse effect on small businesses or anticipated economic costs to persons in connection with these rules and amendments.

Mr. Simpson also has determined that for the first five-year period in which the proposed rules are in effect, the anticipated public benefit is rule clarity and consistency.

Comments on the proposed rules and amendments may be submitted, in writing, no later than thirty (30) days from the date of this publication to Ms. Hadassah Schloss, Cost Rules Administrator, Open Records Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2198 or by e-mail to "Hadassah.Schloss@oag.state.tx.us". All requests for a public hearing on the proposed rules and amendments, submitted under the Administrative Procedure Act, must be received by the OAG no more than fifteen (15) days after the notice of proposed changes in the sections that have been published in the *Texas Register*.

The proposed amendments are made pursuant to the authority granted to the OAG under Texas Government Code §552.262 and §552.269.

The proposed rules and amendments affect Chapter 552 of the Texas Government Code.

The OAG hereby certifies that the proposed rules and amendments have been reviewed by legal counsel and are found to be within the OAG's legal authority to adopt.

§70.1. Purpose.

(a) The Office of the Attorney General (the "Attorney General") [~~Texas Building and Procurement Commission (the "Commission")~~] must:

(1) Adopt rules for use by each governmental body in determining charges under Texas Government Code, Chapter 552 (Public Information) Subchapter F (Charges for Providing Copies of Public Information);

(2) - (3) (No change.)

(b) [~~The cost of providing public information is not necessarily synonymous with the charges made for providing public information.~~] Governmental bodies must use the charges established by these rules, unless:

(1) - (4) (No change.)

§70.2. Definitions.

The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Attorney General--The Office of the Attorney General of Texas [~~Commission--The Texas Building and Procurement Commission~~].

(4) Governmental Body--An entity as [~~As~~] defined by §552.003 of the Texas Government Code.

~~[(A) A board, commission, department, committee, institution, agency, or office that is within or is created by the executive or legislative branch of state government and that is directed by one or more elected or appointed members;]~~

~~[(B) A county commissioners court in the state;]~~

~~[(C) A municipal governing body in the state;]~~

~~[(D) A deliberative body that has rulemaking or quasi-judicial power and that is classified as a department, agency, or political subdivision of a county or municipality;]~~

~~[(E) A school district board of trustees;]~~

~~[(F) A county board of school trustees;]~~

~~[(G) A county board of education;]~~

~~[(H) The governing board of a special district;]~~

~~[(I) The governing body of a nonprofit corporation organized under Chapter 67 that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under the Texas Tax Code, Chapter 11, §11.30;]~~

~~[(J) The part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds;]~~

~~[(K) A local workforce development board created under §2308.253 of the Texas Government Code;]~~

~~[(L) A nonprofit corporation that is eligible to receive funds under the federal community services block grant program and that is authorized by this state to serve a geographic area of the state; and (M) Does not include the judiciary.]~~

(5) - (6) (No change.)

(7) Nonstandard copy--Under §70.1 through §70.11 [~~§111.61 through §111.71~~] of this title, a copy of public information that is made available to a requestor in any format other than a standard paper copy. Microfiche, microfilm, diskettes, magnetic tapes, CD-ROM are examples of nonstandard copies. Paper copies larger than 8 1/2 by 14 inches (legal size) are also considered nonstandard copies.

(8) (No change.)

(9) Standard paper copy--Under §70.1 through §70.11 [~~§111.61 through §111.71~~] of this title, a copy of public information that is a printed impression on one side of a piece of paper that measures up to 8 1/2 by 14 inches. Each side of a piece of paper on which information is recorded is counted as a single copy. A piece of paper that has information recorded on both sides is counted as two copies.

(10) Archival box--[~~:~~] A carton box measuring approximately 12.5" width x 15.5" length x 10" height, or able to contain approximately 1.5 cubic feet in volume.

§70.3. Charges for Providing Copies of Public Information.

(a) The charges in this section to recover costs associated with providing copies of public information are based on estimated average costs to governmental bodies across the state. When actual costs are 25% higher than those used in these rules, governmental bodies other than agencies of the state, may request an exemption in accordance with §70.4 [~~§111.64~~] of this title (relating to Requesting an Exemption).

(b) Copy charge.

(1) (No change.)

(2) Nonstandard copy. The charges in this subsection are to cover the materials onto which information is copied and do not reflect any additional charges, including labor, that may be associated with a particular request. The charges for nonstandard copies are:

(A) - (K) (No change.)

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper--See also §70.9 [~~§111.69~~] of this title)--$.50;

(M) (No change.)

(c) Labor charge for programming. If a particular request requires the services of a programmer in order to execute an existing program or to create a new program so that requested information may be accessed and copied, the governmental body may charge for the programmer's time.

(1) The hourly charge for a programmer is $28.50 an hour[~~, which includes fringe benefits~~]. Only programming services shall be charged at this hourly rate.

(2) - (3) (No change.)

(d) Labor charge for locating, compiling, manipulating data, and reproducing public information.

(1) The charge for labor costs incurred in processing a request for public information is $15 an hour[~~, which includes fringe benefits~~]. The labor charge includes the actual time to locate, compile, manipulate data, and reproduce the requested information.

(2) - (6) (No change.)

(e) - (k) (No change.)

(l) Miscellaneous charges: A governmental body that accepts payment by credit card for copies of public information and that is charged a "transaction fee" by the credit card company may recover that fee. [~~The commission shall reevaluate and update these charges as necessary.~~]

(m) These charges are subject to periodic reevaluation and update.

§70.4 Requesting an Exemption.

(a) - (g) (No change.)

(h) All determinations to grant or deny a request for exemption shall be completed promptly, but shall not exceed 90 days from receipt of the request by the Attorney General [~~Texas Building and Procurement Commission~~].

§70.6. Format for Copies of Public Information.

(a) If a requesting party asks that information be provided on [~~a diskette or other~~] computer-compatible media of a particular kind, and the requested information is electronically stored and the governmental body has the capability of providing it in that format and is able to provide it at no greater expense or time, the governmental body shall provide the information in the requested format [~~on computer-compatible media~~].

(b) - (f) (No change.)

§70.7. Estimates and Waivers of Public Information Charges.

(a) A governmental body is required to provide a requestor with an itemized statement of estimated charges if charges for copies of public information will exceed $40, or if a charge in accordance with §70.5 [~~§111.65~~] of this title (relating to Access to Information Where Copies Are Not Requested) will exceed $40 for making public information available for inspection. The itemized statement of estimated charges is to be provided before copies are made to enable requestors to make the choices allowed by the Act. A governmental body that fails to provide the required statement may not collect more than $40. The itemized statement must be provided free of charge and shall [~~must~~] contain the following information:

(1) - (3) (No change.)

(4) A statement that the request will be considered to have been automatically withdrawn by the requestor if a written response from the requestor is not received within ten business days after the date the statement was sent, in which the requestor states that the requestor:

(A) - (B) (No change.)

(C) Has sent to the Attorney General [~~Texas Building and Procurement Commission~~] a complaint alleging that the requestor has been overcharged for being provided with a copy of the public information.

(b) If after starting the work, but before making the copies available, the governmental body determines that the initially accepted [~~initial~~] estimated statement will be exceeded by 20% or more, an updated statement must be sent. If the requestor does not respond to the updated statement, the request is considered to have been withdrawn by the requestor.

(c) - (e) (No change.)

(f) A governmental body may require payment of overdue and unpaid balances before preparing a copy in response to a new request if:

(1) The governmental body provided, and the requestor accepted, the required itemized statements for previous requests that remain unpaid [~~if itemized statements were required by law~~]; and

(2) The aggregated unpaid amount exceeds [~~exceed~~] $100.

(g) - (h) (No change.)

§70.8. Processing Complaints of Overcharges.

(a) Pursuant to §552.269(a) of the Texas Government Code, requestors [~~a requestor~~] who believe they have [~~believes he/she has~~] been overcharged for a copy of public information may complain to the Attorney General [~~Commission~~].

(b) The complaint must be in writing, and must:

(1) - (2) (No change.)

(3) Be received by the Attorney General [~~Texas Building and Procurement Commission~~] within 10 business [~~working~~] days after the person knows of the occurrence of the alleged overcharge.

(4) Failure to provide the information listed within the stated timeframe will result in the complaint being dismissed.

(c) The Attorney General [~~Texas Building and Procurement Commission~~] shall address written questions to the governmental body, regarding the methodology and figures used in the calculation of the charges which are the subject of the complaint.

(d) (No change.)

(e) The Attorney General [~~Texas Building and Procurement Commission~~] may use tests, consultations with records managers and technical personnel at the Attorney General [~~TBPC~~] and other agencies, and any other reasonable resources to determine appropriate charges.

(f) If the Attorney General [~~Texas Building and Procurement Commission~~] determines that the governmental body overcharged for requested public information, the governmental body shall adjust its charges in accordance with the determination, and shall refund the difference between what was charged and what was determined to be appropriate charges.

(g) The Attorney General [~~Texas Building and Procurement Commission~~] shall send a copy of the determination to the complainant and to the governmental body.

(h) Pursuant to §552.269(b) of the Texas Government Code, a requestor who overpays because a governmental body refuses or fails to follow the charges established by the Attorney General [~~Commission~~], is entitled to recover three times the amount of the overcharge if the governmental body did not act in good faith in computing the charges.

~~[(i) The Texas Building and Procurement Commission does not have the authority to determine whether or not a governmental body acted in good faith in computing charges.]~~

§70.10. The Attorney General [~~Texas Building and Procurement Commission~~] Charge Schedule.

The following is a summary of the charges for copies of public information that have been adopted by the Attorney General [~~Commission~~].

(1) - (9) (No change.)

(10) Photographs--Actual cost as calculated in accordance with §70.9(5) [~~§111.69(5)~~] of this title.

(11) Maps--Actual cost as calculated in accordance with §70.9(4) [~~§111.69(4)~~] of this title.

(12) - (14) (No change.)

§70.11. Informing the Public of Basic Rights and Responsibilities under the Public Information Act.

(a) Pursuant to Texas Government Code, Chapter 552, Subchapter D, §552.205, an officer for public information shall promi-

nently display a sign in the form prescribed by the Attorney General [~~Texas Building and Procurement Commission~~].

(b) - (c) (No change.)

(d) The sign will contain the following wording:

(1) (No change.)

(2) Rights of Requestors. You have the right to:

(A) - (F) (No change.)

(G) Receive a copy of the communication from the governmental body asking the [~~Office of the~~] Attorney General for a ruling on whether the information can be withheld under one of the accepted exceptions, or if the communication discloses the requested information, a redacted copy;

(H) Lodge a written complaint about overcharges for public information with the Attorney General [~~Texas Building and Procurement Commission~~]. Complaints of other possible violations may be filed with the county or district attorney of the county where the governmental body, other than a state agency, is located. If the complaint is against the county or district attorney, the complaint must be filed with the [~~Office of the~~] Attorney General.

(3) Responsibilities of Governmental Bodies. All governmental bodies responding to information requests have the responsibility to:

(A) - (C) (No change.)

(D) Inform requestors of the estimated charges greater than $40 and any changes in the estimates above 20 percent of the original estimate, and confirm that the requestor accepts the charges, has amended the request, or has sent a complaint of overcharges to the Attorney General [~~Texas Building and Procurement Commission~~], in writing before finalizing the request;

(E) Inform the requestor if the information cannot be provided promptly and set a date and time to provide it within a reasonable time;

(F) Request a ruling from the [~~Office of the~~] Attorney General regarding any information the governmental body wishes to withhold, and send a copy of the request for ruling, or a redacted copy, to the requestor;

(G) - (H) (No change.)

(I) Respond in writing to all written communications from the Attorney General [~~Texas Building and Procurement Commission~~] regarding complaints about the charges for the information and other alleged[~~. Respond to the Office of the Attorney General regarding complaints about~~] violations of the Act.

(4) (No change.)

(5) Information to be released.

(A) You may review it promptly, and if it cannot be produced within 10 business [~~working~~] days the public information officer [~~office~~] will notify you in writing of the reasonable date and time when it will be available;

(B) (No change.)

(C) Cost of Records.

(i) You must respond to any written estimate of charges within 10 business days of the date the governmental body sent it or the request is considered [~~to be~~] automatically withdrawn;

(ii) - (iv) (No change.)

(6) Information that may be withheld due to an exception.

(A) - (C) (No change.)

(D) The Attorney General must issue [~~render~~] a decision no later than the 45th business [~~working~~] day after the Attorney General [~~attorney general~~] received the request for a decision. The Attorney General [~~attorney general~~] may request an additional 10 business day [~~working days~~] extension.

(E) (No change.)

(7) Additional Information on Sign.

(A) (No change.)

(B) The sign must contain information of the local county attorney or district attorney where requestors may submit a complaint of alleged violations of the Act, as well as the contact information for the [~~Office of the~~] Attorney General [~~and the Texas Building and Procurement Commission~~].

(C) (No change.)

(e) A governmental body may comply with Texas Government Code, §552.205 and this rule by posting the sign provided by the Attorney General [~~Texas Building and Procurement Commission~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606762
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 463-2096

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC) proposes to amend §353.2, Definitions, and proposes new §§353.701, 353.702, and 353.703 in a new Subchapter H to implement the Integrated Care Management model (ICM) as required by House Bill (H.B.) 1771 and Senate Bill (S.B.) 1188, 79th Legislature, Regular Session, 2005, to be codified at §533.061 and §533.062, Government Code, relating to Integrated Care Management.

Background and Justification

H.B. 1771 and S.B. 1188 require that HHSC promulgate rules to implement the ICM model. ICM is a non-capitated managed care plan that integrates acute care and long term services and supports for Supplemental Security Income (SSI) and SSI-related clients. By law, the model is required to be implemented in the Dallas Service Area. At the request of local public officials, the HHSC Executive Commissioner has approved implementing the model in the Tarrant Service Area.

Section-by-Section Summary

Amended §353.2 adds definitions for 1915(c) Nursing Facility Waiver, Integrated Care Management, ICM Contractor, Long Term Services and Supports, Medical Assistance Only (MAO) and Post-stabilization Care Services. Amended §353.2 also includes clerical changes and clarifications for existing definitions. New §353.701 describes the general provisions related to the ICM model. New §353.702 describes client eligibility for the model. New §353.703 describes the roles and responsibilities of providers wishing to participate in the ICM model.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-years the proposed rules are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rules as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the section. The anticipated public benefit, as a result of enforcing the section, will be improved access to integrated acute care and long term services and supports for clients in the Dallas and Tarrant Service Areas.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Gary Young, Senior Project Specialist, Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC H-320; Austin, Texas 78708-5200; by fax to (512) 491-1969, or by e-mail to gary.young@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for January 29, 2007 from 9:30 a.m. to 10:30 a.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments and new rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the content clearly indicates otherwise.

(1) 1915(c) Nursing Facility Waiver--The Medicaid waiver program that provides home and community based services to aged, blind and disabled clients as cost-effective alternatives to institutional care in nursing homes.

(2) [~~(1)~~] Action--An Action is defined as:

(A) The denial or limited authorization of a requested Medicaid service, including the type or level of service;

(B) the reduction, suspension, or termination of a previously authorized service;

(C) the failure to provide services in a timely manner;

(D) the denial in whole or in part of payment for a service;

(E) the failure of an [~~a Managed Care Organization (~~]MCO[~~)~~] or the ICM Contractor to act within the timeframes set forth by the Commission and state and federal law; or

(F) for a resident of a rural area with only one MCO, the denial of a Medicaid member's request to obtain services outside the network [~~Network~~].

(3) [~~(2)~~] Acute Care--Preventive care, primary care, and other medical or behavioral health care provided for a condition having a relatively short duration. In the ICM Program, acute care services do not include behavioral health services in the Dallas service area.

(4) [~~(3)~~] Acute Care Hospital--A hospital that provides acute care services.

(5) [~~(4)~~] Adverse Determination--A determination by an MCO or the ICM Contractor that the health care services and behavioral health services [~~health and behavioral health care services~~] furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.

(6) [~~(5)~~] Agreement or Contract--The formal, written, and legally enforceable contract and amendments thereto between the Commission and an MCO or the ICM Contractor [~~MCO's~~].

(7) [~~(6)~~] Allowable Revenue--All managed care revenue received by the MCO pursuant to the contract during the contract pe-

riod, including retroactive adjustments made by HHSC. This would include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(8) [~~(7)~~] Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action or the ICM Contractor's action.

(9) [~~(8)~~] Behavioral Health Services--Covered services for the treatment of mental health or chemical dependency disorders.

(10) [~~(9)~~] Capitation Rate--A fixed predetermined fee paid by HHSC to the MCO each month, in accordance with the contract, for each enrolled member in exchange for which the MCO arranges for or provides a defined set of covered services to the member, regardless of the amount of covered services used by the enrolled member.

(11) [~~(10)~~] Client--Any Medicaid-eligible recipient.

(12) [~~(11)~~] CMS--The Centers for Medicare and [~~&~~] Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and the Children's Health Insurance Program (CHIP).

(13) [~~(12)~~] Commission--The Texas Health and Human Services Commission.

(14) [~~(13)~~] Complainant--A member, or a treating provider or other individual designated to act on behalf of the member, who files a complaint.

(15) [~~(14)~~] Complaint--Any dissatisfaction expressed by a complainant, orally or in writing, to the MCO or the ICM Contractor about any matter related to the MCO or the ICM Contractor other than an action. Subjects for complaints may include, but are not limited to:

(A) the quality of care of services provided;[~~,~~]

(B) aspects of interpersonal relationships such as rudeness of a provider or employee; and

(C) failure to respect the Medicaid member's rights.

[~~(15) Contract--The formal, written, and legally enforceable agreement and any amendments and documents incorporated into the agreement between an MCO and HHSC.~~]

(16) Core Service Area--The core set of service area counties defined by HHSC for the Medicaid managed care [~~Managed Care~~] programs in which Medicaid eligibles will be required to enroll in the MCO.

(17) Covered Services--Health [~~health~~] care services the MCO must arrange to provide to member, including all services required by the Commission, state and federal law, and all value-added services negotiated by the Commission and an MCO. Covered services include behavioral health services.

(18) Cultural Competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(19) Day--A calendar day, unless specified otherwise.

(20) Default Enrollment--The process established by HHSC to assign a mandatory Medicaid Managed Care enrollee to an MCO when an MCO has not been selected by the client.

(21) Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(22) Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing and/or working.

(23) Elective Enrollment--Selection of a PCP and MCO by a client during the enrollment period established by the Commission.

(24) Emergency Behavioral Health Condition--Any condition, without regard to the nature or cause of the condition, that [~~which~~] in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the client would present an immediate danger to themselves or others, or

(B) renders the client incapable of controlling, knowing or understanding the consequences of his or her actions.

(25) Emergency Services--Covered inpatient and outpatient services furnished by a network provider or out-of-network provider [~~Provider~~] that is qualified to furnish such services that are needed to evaluate or stabilize an emergency medical condition and/or an emergency behavioral health condition, including Post-stabilization Care Services.

(26) Emergency Medical Condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of a pregnant woman or her unborn child.

(27) Encounter--A covered service or group of covered services delivered by a provider to a member during a visit between the member and provider. This also includes value-added services.

(28) EPSDT--The federally mandated Early and Periodic Screening, Diagnosis and Treatment program defined in Chapter 33 of Title 25 of the Texas Administrative Code. The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(29) EPSDT-CCP--The Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program, includes medically necessary benefits for children under 21 years of age in addition to benefits available to the general Medicaid population.

(30) Exclusive Provider Benefit Plan (EPBP)--A Managed Care Plan that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for exclusive provider benefit plans, and contracts with the Commission to provide CHIP or Medicaid coverage.

(31) Experience Rebate--The portion of the MCO's net income before taxes that is returned to the State in accordance with 28 TAC Chapter 11, Subchapter S, relating to solvency standards for Medicaid MCOs [~~managed care organizations~~].

(32) Fair Hearing--The process adopted and implemented by HHSC in Chapter 357 of this Title, relating to Medical fair hearing [~~Fair Hearing~~] rules, in compliance with federal regulations and state rules relating to Medicaid fair hearings [~~Fair Hearings~~].

(33) Federally Qualified Health Center (FQHC)--An entity certified by CMS to meet the requirements of §1861(aa)(3) of the Social Security Act (42 U.S.C. §1395x(aa)(3)) as a Federally Qualified Health Center that is enrolled as a provider [~~Provider~~] in the Texas Medicaid program.

(34) Federal Waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(35) Health Care Services--The acute care, behavioral health care [~~acute behavioral health care~~] and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(36) Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight of the state Medicaid program. The Commission's authority is established in Chapter 531 of the Texas Government Code.

(37) Health Maintenance Organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code, or a certified Approved Non-Profit Health Corporation [~~(ANHC)~~] formed in compliance with Chapter 844 of the Texas Insurance Code.

(38) Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals.

(39) Integrated Care Management (ICM) Program--A Medicaid managed care plan where an ICM Contractor manages and coordinates acute care services and LTSS for eligible SSI clients and other eligible Medicaid clients.

(40) ICM Contractor--An entity under contract with HHSC and responsible for managing and coordinating acute care services and long term services and supports (LTSS) for the ICM Program. The ICM Contractor does not pay medical claims.

(41) Long Term Services and Supports (LTSS)--Services provided to members in their home or other community-based settings necessary to provide assistance with activities of daily living to allow the member to remain in the most integrated setting possible. These LTSS services include services provided to all SSI recipients under the Texas State Plan as well as those services available only to persons who qualify for 1915(c) nursing facility waiver services.

(42) [~~(39)~~] Managed Care--A health delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(43) [~~(40)~~] Managed Care Organization (MCO)--An entity that has a valid Texas Department of Insurance certificate of authority to operate as an HMO [~~a Health Maintenance Organization~~] under Chapter 843 of the Texas Insurance Code, an Approved Nonprofit Health Corporation [~~approved nonprofit health corporation~~] under Chapter 844 of the Texas Insurance Code, or an Exclusive Provider Benefit Plan issued by an insurer licensed by the Texas Department of Insurance, as described at 28 TAC Chapter 3, Subchapter KK, relating to Exclusive Provider Benefit Plans [~~exclusive provider benefit plans~~].

(44) [~~(41)~~] Managed Care Plan--includes [~~Primary Care Case Management (~~]PCCM[~~)~~], HMO, [~~and~~] Exclusive Provider Benefit Plans (EPBP), and the ICM Contractor.

(45) [~~(42)~~] Marketing--Any communication from an MCO to a client who is not enrolled with the [~~an~~] MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO.

(46) [~~(43)~~] Marketing Materials--Materials that are produced in any medium by or on behalf of the MCO or the ICM Contractor that can reasonably be interpreted as intending to market to potential members. Materials relating to the prevention, diagnosis or treatment of a medical condition are not marketing materials. [~~Health-related materials are not marketing materials.~~]

(47) [~~(44)~~] Medicaid--The medical assistance program authorized and funded pursuant to Title XIX of the Social Security Act (42 U.S.C. §1396 *et seq)* and administered by HHSC.

(48) Medical Assistance Only (MAO)--person who qualifies financially for Medicaid but does not receive SSI payments.

(49) [~~(45)~~] Medical Home--A PCP or specialty care provider who has accepted the responsibility for providing accessible, continuous, comprehensive and coordinated care to members participating in an HHSC MCO or to non-Medicare members participating in the ICM Program.

(50) [~~(46)~~] Medically Necessary Behavioral Health Services--Those behavioral health services that are documented and:

(A) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder or to improve, maintain or prevent deterioration of functioning resulting from such a disorder;

(B) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are the most appropriate level or supply of service that can be safely provided;

(E) could not have been omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered;

(F) are not experimental or investigational; and

(G) are not primarily for the convenience of the member [~~Member~~] or provider [~~Provider~~].

(51) [~~(47)~~] Medically Necessary Health Services--Health services other than behavioral health services that are documented and:

(A) reasonable and necessary to prevent illness or medical conditions or provide early screening, interventions, and/or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a handicap, cause illness or infirmity of a member, or endanger life;

(B) provided at appropriate facilities and at the appropriate levels of care for the treatment of the member's medical condition;

(C) consistent with health care practice guidelines and standards that are issued by professionally recognized health care organizations or governmental agencies;

(D) consistent with the diagnoses of the condition;

(E) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency;

(F) are not experimental or investigative; and

(G) are not primarily for the convenience of the member or provider.

(52) [~~(48)~~] Member--A person who is eligible for benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the Medicaid managed care [~~Managed Care~~] program, and is enrolled in a [~~the~~] Medicaid managed care plan [~~Managed Care program and a Medicaid MCO~~].

(53) [~~(49)~~] Member Education Program--A planned program of education:

(A) concerning access to health care through the MCO or the ICM Contractor [~~managed care organization~~] and about specific health topics;

(B) that is approved by HHSC [~~the Health and Human Services Commission~~]; and

(C) is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(54) [~~(50)~~] Member Materials--All written materials produced or authorized by the MCO or ICM Contractor and distributed to members or potential members containing information concerning the MCO or ICM Program. Member materials include, but are not limited to, member ID cards, member handbooks, provider [~~Provider~~] directories, and marketing materials [~~Marketing Materials~~].

(55) [~~(51)~~] Outside Regular Business Hours--As applied to FQHCs and RHCs, means before 8 a.m. and after 5 p.m. Monday through Friday, weekends, and federal holidays.

(56) [~~(52)~~] Participating MCOs--Those MCOs that have a contract with the Commission to provide services to Medicaid managed care members.

(57) [~~(53)~~] PCCM or Primary Care Case Management--PCCM is a managed care model allowed under federal regulations in which the Commission contracts with providers to form a managed care provider network.

(58) Post-stabilization Care Services--Covered services, related to an emergency medical condition that are provided after a Medicaid member is stabilized in order to maintain the stabilized condition, or, under the circumstances described in 42 C.F.R. §§438.114(b) and (e) and 42 C.F.R. §422.113(c)(iii) to improve or resolve the Medicaid member's condition.

(59) [~~(54)~~] Primary Care Provider (PCP)--A physician or other provider who has agreed with the MCO, or the ICM Contractor to provide a medical home [~~Medical Home~~] to members and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(60) [~~(55)~~] Provider--A credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that have a Contract with the MCO or the ICM Contractor for the delivery of covered services to the MCO's or the ICM Program's members.

(61) [~~(56)~~] Provider Education Program--Program of education about the Medicaid managed care program and about specific health care issues presented by the MCO or ICM Contractor [~~managed care organization~~] to its providers through written materials and training events.

(62) [~~(57)~~] Provider Network or Network--All providers that have contracted with the MCO or ICM Contractor for the applicable program.

(63) [~~(58)~~] QAPI--Quality Assessment Performance Improvements.

(64) [~~(59)~~] Quality Improvement--A system to continuously examine, monitor and revise processes and systems that support and improve administrative and clinical functions.

(65) [~~(60)~~] Risk--The potential for loss as a result of expenses and costs of the MCO or ICM Contractor exceeding payments made by HHSC under the contract.

(66) [~~(61)~~] Rural Health Clinic (RHC) --An entity that meets all of the requirements for designation as a rural health clinic under §1861(aa)(1) of the Social Security Act (42 U.S.C. §1395x(aa)(1)) and is approved for participation in the Texas Medicaid program.

(67) [~~(62)~~] Service Area--The counties included in any HHSC-defined core service area [~~Core Service Area~~] as applicable to each MCO or the ICM Contractor.

(68) [~~(63)~~] Significant Traditional Provider (STP) --Providers identified by HHSC as having provided a significant level of care to the target population. [~~Disproportionate Share Hospitals (~~]DSH[~~)~~] are also Medicaid STPs.

(69) [~~(64)~~] Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to the aged, blind, and disabled administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(70) [~~(65)~~] TDI--Texas Department of Insurance.

(71) [~~(66)~~] Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program, described at 42 U.S.C. §1905d(r) and 42 CFR §440.40 and §§441.40 - 441.62.

(72) [~~(67)~~] Value-Added Services--Additional services for coverage beyond those specified in the Request For Proposal. Value-Added Services must be actual health care services or benefits rather than gifts, incentives, health assessments or educational classes. Temporary phones, cell phones, additional transportation benefits, and extra home health services may be value-added services, if approved by HHSC. Best practice approaches to delivering covered services are not considered value-added services [~~Value-Added Services~~]. For foster children in a statewide Medicaid managed care program, value-added services may include non-health care services and benefits that support the physical, mental and/or developmental well being of the child.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606791

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 424-6900

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SUBCHAPTER H. INTEGRATED CARE MANAGEMENT PROGRAM

1 TAC §§353.701 - 353.703

Statutory Authority

The new rules are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The new rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.701. General Provisions.

(a) HHSC will implement an Integrated Care Management (ICM) Program for the delivery of Medicaid-covered acute care and Long Term Services and Supports (LTSS) for the eligible Supplemental Security Income (SSI), SSI-related, and Medical Assistance Only (MAO) Medicaid population. Services to be included in the ICM Program are all covered primary care and acute care services and all community care services covered by Medicaid.

(b) ICM will operate under the authority of 1915(b) and (c) waivers.

(c) HHSC will select an ICM Contractor, through a competitive procurement, to manage and coordinate Medicaid-covered acute care and LTSS.

(d) The ICM Program will serve Medicaid-eligible clients in the Dallas and Tarrant service areas. The ICM Program may be implemented in other service areas at the discretion of the HHSC Executive Commissioner.

§353.702. Client Participation.

(a) All Supplemental Security Income (SSI) and SSI-related clients and clients who qualify for Medicaid benefits as Medical Assistance Only (MAO) clients must receive their Medicaid services through the ICM Program.

(b) The following groups of persons eligible for Medicaid are excluded from participation in the ICM Program:

(1) Persons in institutional settings, including a resident of:

(A) a nursing facility;

(B) an Intermediate Care Facility for the Mentally Retarded (ICF-MR), or

(C) an Institution of Mental Disease (IMD) or state hospital.

(2) Persons enrolled in a 1915(c) Medicaid waiver program other than the Community Based Alternatives (CBA) waiver program, including the following waiver programs:

(A) Community Living Assistance and Support Services;

(B) Medically Dependent Children's waiver;

(C) Home and Community Services waiver;

(D) Deaf Blind Multiple Disability waiver;

(E) Consolidated waiver program, and

(F) Texas Home Living waiver.

(3) Individuals not eligible for full Medicaid benefits, such as:

(A) individuals that are in the Community Attendant Services program;

(B) Qualified Medicare Beneficiaries (QMB);

(C) Specified Low-income Medicare Beneficiaries (SLMB);

(D) Qualified Disabled and Working Individuals (QDWI), and

(E) Undocumented aliens.

(4) Individuals under age 21 in state foster care or the foster care youth transitional Medicaid program.

(c) SSI clients under 21 years of age, SSI clients receiving ongoing rehabilitative services through the local mental health authority, and SSI clients on the waiting list to receive MHMR HCS waiver services will have the option of ICM Program participation or choosing the Medicaid fee-for-service program.

§353.703. Participating Providers.

(a) Providers who traditionally have served Medicaid clients will be given the opportunity to participate in the ICM Program provided they meet quality and credentialing standards.

(b) All participating providers must agree to contract provisions with both the State and the ICM Contractor, and agree to the State's payment arrangements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606792
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 424-6900

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

DIVISION 32. DISEASE MANAGEMENT

1 TAC §§354.1415 - 354.1417

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1415, concerning Disease Management (DM) vendor requirements and conditions for participation;

§354.1416, which outlines the eligibility criteria for the Disease Management Program; and §354.1417, which provides the definitions for Disease Management services.

Background and Justification

Disease Management was implemented to satisfy the requirements of House Bill 727, 78th Legislature, Regular Session, 2003, which mandated that HHSC, by rule, prescribe the minimum requirements that a provider of a disease management program must meet to be eligible to receive a contract. The Disease Management Program is a preventive service for individuals who receive health care through Texas Medicaid and who have one or more of the following diseases:

Congestive Heart Failure (CHF);

Asthma;

Diabetes;

Chronic Obstructive Pulmonary Disease (COPD); and

Coronary Artery Disease (CAD).

Section 19 (b) of S.B. 1188, 79th Legislature, Regular Session, 2005, amends Subchapter B, Section 32.059, Human Resources Code by requiring HHSC to prescribe, by rule, the minimum requirements that a provider of a disease management program must meet to be eligible to receive a contract. The revisions to §§354.1415 - 354.1417 update current rule language to meet the directives set out in S.B. 1188 relating to the disease management program which serves recipients who are not eligible for Medicaid managed care services. In addition, these rules are being updated to reflect current eligibility requirements and exclusions for the program, including the inclusion of PCCM recipients in the program.

Section-by-Section Summary

Section 354.1415, describes the minimum requirements that a provider of a disease management program must meet to be eligible to receive a contract. HHSC proposes to amend the rule by providing additional detail to ensure compliance with all laws, regulations, and administrative rules. The rule amendment establishes the use of nationally recognized evidence-based healthcare practice guidelines for disease management with accepted standards of care in the medical community. In addition, S.B. 1188 adds a new requirement for managed care organizations and providers of DM programs to coordinate client care during a transition period for clients that move from one DM program to another program.

Section 354.1416, outlines the eligibility criteria clients must meet in order to be eligible to participate in the program. The proposed amendment also adds Primary Care Case Management (PCCM) clients, which enables these clients to be eligible to participate in the program. Lastly, the amendment adds additional detail to clarify when Medicaid clients are included or excluded from the program and when DM clients can be dis-enrolled from the program.

The amendment to §354.1417, adds the definition for Primary Care Case Management to the list of disease management definitions.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-years the amended rules are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendments, as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amendments will be improved access to and quality of health care services.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is a rule the specific intent of which is to protect the environmental or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposed amendments to the rules may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for January 23, 2007 from 9:30 a.m. to 10:30 a.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1415. Vendor Requirements and Conditions for Participation.

(a) In addition to the general requirements for contractors listed in Chapter 391, Purchase of Goods and Services by the Health and Human Services Agencies and Chapter 392, Procurements by the Health and Human Services Commission, disease management companies must meet all of the following program requirements to be considered for a contract with the state. Entities who wish to contract with the Health and Human Services Commission (HHSC) to provide disease management services must meet the following conditions:

(1) Have an appropriate method for using HHSC healthcare data to identify targeted disease populations;

(2) Have nationally recognized evidence-based healthcare practice guidelines with accepted [~~minimum~~] standards of care in the medical community and clinical outcomes for each targeted disease;

(3) Have collaborative healthcare practice models in place to include HHSC's contracted physicians, support service providers, and existing community resources;

(4) Ensure that a recipient's primary care physician (PCP) and other appropriate specialty physicians, or registered nurses, advance practice nurses, or physician assistants become directly involved in the disease management program through which the recipient receives services;

(5) Have patient self-care management education materials and methods appropriate to each targeted disease population that demonstrate cultural competency;

(6) Have service provider education materials and methods appropriate to each targeted disease population;

(7) Have process and outcome measurements, evaluations, and management systems using nationally recognized evidence-based scientific information and [~~on~~] standardized best practice guidelines;

(8) Have routine reporting processes that are proven to properly support disease management goals;

(9) Have demonstrable, measurable, and successful experience in disease management for the targeted disease populations;

(10) Provide access to 24 hour-a-day, seven days-per-week nurse call center;

(11) Provide coordination of client care during a transition period for clients that move from enrollment in one disease management program to another;

(12) [~~(11)~~] Have the ability to guarantee program savings;

(13) [~~(12)~~] Ensure compliance with all laws, regulations, and administrative rules that govern the performance of the disease management services and deliverables including all state and federal tax laws, employment laws, regulatory requirements, and licensing provisions;

(14) [~~(13)~~] Ensure each of its personnel who provides services or deliverables through the disease management program is properly licensed, certified, and/or has proper permits to perform the required disease management activities;

(15) [~~(14)~~] Ensure data entered, maintained, or generated to meet disease management program requirements are retained and accessible according to Federal requirement 42 CFR §431.17 and in accordance with the HHSC [~~Health and Human Services Commission~~] Medicaid Records Retention and Disposition Schedule;

(16) [~~(15)~~] Maintain an accounting system that provides an audit trail containing sufficient financial documentation to allow for the reconciliation of billings, expenses, and financial information with all general ledger accounts applicable to the contract;

(17) [~~(16)~~] Maintain and retain financial records and supporting documents relating to the disease management program for a period of five years, after the date of the final payment under the contract, or until the resolution of all litigation, claims, and financial management review or audit pertaining to the contract, whichever is longer; [~~.~~]

(18) [~~(17)~~] Provide authorized state and federal governments full access to all information needed to conduct reviews and audits required by law or by the contract in accordance with applicable auditing standards;

(19) [~~(18)~~] Ensure contractor's systems and processes, to include files or data transferred from the contractor's internal system, comply with the requirements of the Health Insurance Portability Accountability Act of 1996 (Public Law 104-191) ("HIPAA"); and

(20) [~~(19)~~] Ensure contractor and its subcontractors will comply with any policy, rule, or reasonable requirement of HHSC that relates to the safeguarding or disclosure of information relating to Medicaid applicants and recipients, contractor's operations, or the disease management services.

(b) The contracted disease management vendor must provide at a minimum, the following services to eligible clients and participating providers:

(1) Identify eligible clients and stratify them based on health severity level and risk for non-adherence to recommended care;

(2) Provide appropriate interventions that [~~may~~] include, at a minimum, development, implementation, and evaluation of an individual plan of care that:

(A) Addresses [~~addresses~~] the client's (multiple) health, behavioral, and social needs to ensure continuity, quality of care, and effectiveness;

(B) Assures [~~assures~~] and facilitates appropriate collaboration between the client's family and/or caregivers, health care providers, and community case managers; and

(C) Links [~~links~~] health care providers with allied health and social services agencies to facilitate access to necessary services. This includes, but is not limited to, medically necessary services such as pharmacy, mental health, equipment and supplies, rehabilitative therapies, and transportation or interpreter services.

(3) Intensive outreach to find hard-to-serve clients, including home visits if the client does not have telephone service available, or cognitive or physical difficulties that interfere with phone usage. The vendor must use effective, appropriate, and culturally sensitive methods to accomplish this service;

(4) Enroll eligible clients in the disease management program and track active acceptance, refusal to participate, and disenrollment information;

(5) Establish a medical home or primary care provider for clients [~~as needed~~];

(6) Identify gaps between recommended prevention and treatment and actual care provided to clients. Assure that client's medical care follows nationally recognized evidence-based guidelines

for practice. Give providers feedback on differences between recommended prevention and treatment and actual care received by clients, and client adherence to their plan of care;

(7) Assess client's adherence to prescribed medical care and instructions;

(8) Prepare initial health assessments and conduct periodic health status follow-ups based on the risk and health severity level of the client. In-person visits are required for hard to reach clients;

(9) Assist client in accessing appropriate primary and preventive medical care;

(10) Development and demonstration of educational and care management techniques by phone, written materials, and face-to-face personal interaction;

(11) Development and circulation of client educational materials which must be:

(A) Written [~~written~~] at the 5th grade reading level;

(B) Available [~~available~~] for clients who are blind, sight impaired, or have reading impairments; and

(C) Provided [~~provided~~] in a language that may be understood by each individual client.

(12) Educate eligible clients and/or their caregivers regarding the client's particular health care condition and needs to:

(A) Increase the client's understanding of his or her disease and become more effective in self-care management of their health problems;

(B) Understand [~~understand~~] the appropriate use of resources needed to care for his or her problem(s);

(C) Identify [~~identify~~] negative changes in his or her health condition and seek appropriate attention before reaching crisis levels; and

(D) Become [~~become~~] more compliant with medical recommendations.

(13) Provide a 24 hour-a-day, seven day-a-week, [~~culturally sensitive,~~] toll-free nurse consultation service that responds in a culturally sensitive manner [~~to respond~~] to eligible clients and/or caregivers' questions;

(14) Have English and Spanish-speaking nurses, with other languages available through a translation or interpretation service. Translation and interpreter services should be available on-line and not require an additional phone call by the client;

(15) Provide service referrals for specialty, social and ancillary services through the use of a nurse consultation telephone line;

(16) Maintain documentation of disease management services in a member file and distribute to appropriate providers on a periodic basis;

(17) Develop collaboration with client and local hospitals to receive timely notification of hospital admissions of disease management clients;

(18) Provide care coordination support, discharge planning for early discharge and to prevent readmissions, revisions to client's plan of care as appropriate, and on-site visits when needed;

(19) Develop a process to respond to client and provider complaints with HHSC oversight;

(20) Provide intensive recruitment of providers (including specialists when warranted by the client's medical condition) to participate in the disease management program and serve as primary care providers, or as a medical home for eligible clients as needed;

(21) Develop and offer provider education regarding specific evidence-based guidelines selected for use;

(22) Ensure that there are no barriers to medical provider input into the development of the eligible client's plan of care;

(23) Implement a system for providers to request specific disease management interventions;

(24) Provide assistance in assuring necessary specialists care; and

(25) Provide reports on client's health status changes to their participating primary care provider.

§354.1416. Eligibility Criteria.

(a) The disease management program includes members of the Medicaid disabled and TANF populations who:

(1) Receive [~~receive~~] medical services through Fee-For-Service (FFS) or Primary Care Case Management (PCCM) [~~fee-for-service~~] coverage.

(2) Meet [~~meet~~] the following criteria and have a diagnosis of one or more of the following:

(A) Severe Asthma, TANF, ages 2 and above;

(B) Congestive Heart Failure (CHF), Disabled, Non-Medicare, ages 18 and above;

(C) Chronic Obstructive Pulmonary Disease (COPD), Disabled, Non-Medicare, ages 18 and above;

(D) Diabetes, Disabled, Non-Medicare, ages 18 and above;

(E) Coronary Artery Disease (CAD), Disabled, Non-Medicare, ages 18 and above; or

(F) Asthma, Disabled, Non-Medicare, Ages 2 and above.

(3) Are [~~are~~] of sufficient age and cognitive ability to respond actively to health information and care coordination activities.

(4) Do not already have a catastrophic condition that takes precedence over the disease management targeted diseases.

(5) Clients enrolled in Disease Management (DM) must meet all of the specific diagnostic and clinical coding criteria for each targeted disease to be included in the DM program.

(6) Eligible clients must have at least three consecutive months of Medicaid coverage to be included in the DM program.

(7) A client is not included in the DM program until the third month after the month in which the client's claims first qualify him/her for one of the targeted diseases.

(8) Disease management clients in the disabled population are categorized by the following disease hierarchy (from highest to lowest):

(A) Congestive Heart Failure (CHF);

(B) Chronic Obstructive Pulmonary Disease (COPD);

(C) Diabetes;

(D) Coronary Artery Disease (CAD);

(E) Asthma (persons with qualifying asthma claims in Month 1 will remain in the asthma category in subsequent months until qualifying claims in a higher disease category occur).

(9) A person qualifying for more than one condition is continuously categorized in the highest disease category for which the person qualifies. A person moves up the hierarchy as qualifying claims occur, but does not move downward.

(b) Disease Management program client population exclusions: [Medicaid clients excluded from disease management program eligibility are:]

(1) Medicaid clients that are programmatically excluded from DM: [who receive care coordination services:]

(A) Aged and Blind client populations as defined in §358.100 of this title (relating to Definitions); [as residents of an institution]

(B) Dual Eligible client populations that are eligible for Medicare and Medicaid services; [through a Medicaid 1915(c) waiver program;]

(C) Clients with Third Party Insurance; [as a participant in an HMO, or PCCM program;]

(D) Clients in another Medicaid waiver program; [through a Medicare pilot; or]

(E) Clients in a managed care program other than PCCM; [as enrollees in a hospice program;]

(F) Clients in a Medicare pilot;

(G) Clients in a hospice program; or

(H) Clients in institutional or community-based Long Term Care service programs (except previously enrolled DM clients in a Skilled Nursing Facility for 60 consecutive days or less).

(2) Undocumented [undocumented] aliens;

(3) Clients [clients] with health claims indicating they have one or more of the following conditions:

(A) AIDS;

(B) Various [various] forms of cancer;

(C) End-stage [end-stage] renal disease; and

(D) Various [various] transplants.

[(c) Specific coding criteria are used to identify each of the included and excluded populations.]

[(d) Eligible clients must have had at least three consecutive months of Medicaid fee-for-service coverage to be included in the disease management program.]

[(e) A person is not included in the disease management program until the third month after the month in which the person's claims first qualify him/her for one of the targeted diseases.]

[(f) Disease management clients in the disabled population are categorized by the following disease hierarchy (from highest to lowest):]

[(1) Congestive Heart Failure (CHF)]

[(2) Chronic Obstructive Pulmonary Disease (COPD)]

[(3) Diabetes]

[(4) Coronary Artery Disease (CAD);]

[(5) Asthma (persons with qualifying asthma claims in Month 1 will remain in the asthma category in subsequent months until qualifying claims in a higher disease category occur);]

[(g) A person qualifying for more than one condition is continuously categorized in the highest disease category for which the person qualifies. A person moves up the hierarchy as qualifying claims occur, but does not move downward.]

(c) Disease Management program client disenrollment:

(1) [(h)] Clients enrolled in the DM [disease management] program can opt-out of the program within 30-days of enrollment by contacting the DM [disease management] vendor. If the DM [disease management] client does not opt-out within the 30-days, they are locked into the program for a period of six months.

(2) [(i)] Clients may be disenrolled from the DM [disease management] program for the following reasons:

(A) [(1)] Loss [loss] of Medicaid eligibility : clients [. Clients] that regain Medicaid eligibility are automatically re-enrolled into the DM [disease management] program during their first month of renewed eligibility;

(B) Lack of access to covered services, and lack of access to providers experienced in dealing with enrollee's health care needs; or

(C) A request from the DM vendor that the State has reviewed and approved.

[(2) poor quality of care;]

[(3) lack of access to covered services, and lack of access to providers experienced in dealing with enrollee's health care needs; or]

[(4) a request from the disease management vendor with state review and approval.]

§354.1417. Definitions for Disease Management Services.

The following terms and are specific to the Disease Management (DM) Program, and when used in this chapter and, have the following meanings, unless the context clearly indicates otherwise.

(1) Care management--An approach or process for persons with chronic illness focused on preventing acute or urgent care utilization through the use of accepted clinical and non-clinical interventions. These interventions include services such as care coordination, telephone access to nurses skilled in monitoring disease symptoms, including answering medication questions, teaching patient education in self-management, and providing physician-coordinated treatment plans.

(2) Case management--A process whereby covered persons with specific health care needs are identified and a plan is formulated and implemented which efficiently utilizes health care resources to achieve the optimum outcome in the most cost-effective manner.

(3) Catastrophic condition--A health condition, such as AIDS, cancer, or end-stage renal disease requiring intensive and ongoing treatment. Clients diagnosed with these types of conditions are excluded from participation in the Texas DM [Disease Management] Program.

(4) Claim--A request for payment for authorized benefits submitted on the applicable approved form that meets the established itemization requirements.

(5) Disease hierarchy--The classification of diseases (from highest to lowest) within the DM [~~disease management~~] program that establishes severity and anticipated complexity of intervention and management.

(6) Disease Management Program--The Texas Medicaid DM [~~Disease Management~~] Program is a holistic approach to health care delivery designed to identify and provide services to Medicaid Fee-for-Service (FFS) clients with, or who are at risk for developing a targeted chronic disease. Clients receive specific interventions from medical professionals for their disease based on nationally recognized evidence-based practice guidelines, support to follow their physician's plan of care, and education to practice healthy behaviors.

(7) Disease management targeted diseases--The DM [~~Disease Management~~] Program provides services to Medicaid eligible clients with, or at risk for one or more of the following five chronic health conditions: Diabetes, Asthma, Congestive Heart Failure (CHF), Chronic Obstructive Pulmonary Disease (COPD), and Coronary Artery Disease (CAD).

(8) Eligible client--An individual who has been designated by the State as eligible for medical care and services under the Medicaid State Plan and meets the requirements for the targeted diseases included in the DM [~~Disease Management~~] Program.

(9) Fee-for-Service Reimbursement [~~(FFS)~~]--The traditional health care payment system under which physicians and other providers receive a payment for each unit of service they provide or an insurance product in which clients are allowed total freedom to choose their health care providers.

(10) Health severity level--An assessment by the disease management vendor that determines the appropriate intervention level (low, medium, high) based on the progression of the disease and the DM enrollee's health status.

(11) Medical assistance program--The program implemented by the State of Texas under the provisions of Title XIX of the Social Security Act, as amended.

(12) Medical home--A community-based system of health care delivery that provides individual patients a known resource (primary care provider or clinic) for all primary and preventive care services. It also provides continuity of care for primary acute needs 24 hours a day, and is networked to any necessary consultative, specialty, and health-related services.

(13) Physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided.

(14) Preventive care--Comprehensive care emphasizing priorities for prevention, early detection, and early treatment of conditions, generally including routine physical examination, immunization, and well-person care.

(15) Primary Care Case Management (PCCM)--A managed care model allowed under federal regulations in which HHSC contracts with providers to form a managed care provider network.

(16) [~~(15)~~] Primary care provider (PCP)--A physician or provider who has agreed to provide a medical home to Medicaid clients and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care and initiating referral for care.

(17) [~~(16)~~] Stratify--A method used by the disease management vendor to organize interventions based on low, medium, and high categories.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606793
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.110

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.110, concerning Informal Reviews and Formal Appeals in 1 TAC Chapter 355, Reimbursement Rates, Subchapter A, Cost Determination Process.

Background and Justification

The purpose of the amendment is to: (1) Replace references to the Texas Department of Human Services and the Texas Department of Mental Health and Mental Retardation with references to the Texas Department of Aging and Disability Services or the Texas Health and Human Services Commission, as appropriate; (2) Update outdated citations; and (3) Correct erroneous formatting.

Corrections to outdated agency references and citations and corrections of formatting errors will ease understanding and administration of the rule.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit

Carolyn Pratt, Director of Rate Analysis for Long-Term Care, has determined that, during the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing the section include: (1) Greater provider understanding of the rule; and (2) Eased administration of the rule.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined under §2007.003(b) of the Government Code, that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Questions about the content of this proposal may be directed to Luis A. Morales (telephone: (512) 491-1376; FAX: (512) 491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Mr. Morales via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the Commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.110. Informal Reviews and Formal Appeals.

(a) General provisions.

(1) Definitions. The following words or terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(A) Formal appeal--An administrative hearing requested by an interested party under subsection (d) of this section and conducted in accordance with procedures described at 1 TAC §§357.481 - 357.490 (relating to Formal Appeals) [~~40 TAC §§79.1601-79.1610 (relating to Formal Appeals) for appeals related to Texas Department of Human Services (DHS) contracted providers and at 25 TAC Chapter 411, Subchapter D (relating to Administrative Hearings of the Department in Contested Cases) for appeals related to Texas Department of Mental Health and Mental Retardation (TDMHMR) contracted providers~~].

(B) Informal review--The informal reexamination of an action or determination by the Texas Health and Human Services Commission (HHSC) under this chapter requested by an interested party and conducted in accordance with subsection (c) of this section.

(C) Interested party--A Texas Department of Aging and Disability Services (DADS) [~~DHS or TDMHMR~~] contracted provider.

(2) Standing to file informal reviews or formal appeals. Only an interested party has standing to file for an informal review or formal appeal under this section.

(3) Subject matter of informal reviews and formal appeals. An interested party may request an informal review or formal appeal regarding an action or determination under §355.102 of this title (relating to General Principles of Allowable and Unallowable Costs), §355.103 of this title (relating to Specifications for Allowable and Unallowable Costs), §355.104 of this title (relating to Revenues), and §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), or program-specific allowable or unallowable costs, taken specifically in regard to the interested party.

(b) Separation of informal reviews and formal appeals from the reimbursement determination process.

(1) The filing of a request for an informal review or formal appeal under this section does not stay or delay implementation of reimbursement adopted by HHSC in accordance with the requirements of this chapter.

(2) Closure of cost report databases used in the reimbursement determination process and application of results of pending review or appeal. To facilitate the timely and efficient calculation of reimbursement amounts, HHSC closes cost report databases used in the reimbursement determination process prior to the proposal of reimbursement amounts.

(A) Impact on database of pending informal review or formal appeal. If an informal review is pending at the time the database is closed, the database shall include the interested party's cost report data including any adjustments made either in the desk review or field audit. If a formal appeal is pending at the time the database is closed, the database shall include the interested party's cost report data including any adjustments required as a result of the informal review.

(B) Uniform reimbursement.

(i) For programs where reimbursement is uniform by class of service and/or provider type, the cost report database used in reimbursement determination is closed six weeks prior to the public hearing on the proposed reimbursement that is based on the cost report database.

(ii) If an informal review or formal appeal is pending at the time the cost report database is closed, the results of the informal review or formal appeal shall be applied during the next reimbursement determination cycle, if applicable.

(C) Contractor-specific reimbursement.

(i) For programs where reimbursement is contractor-specific the cost report database is closed ten weeks prior to the end of the reimbursement determination cycle.

(ii) If an informal review or formal appeal is pending at the time the cost report database is closed, the results of the informal review or formal appeal shall be applied to the interested party's payment retroactively to the beginning of the current reimbursement determination cycle. The results of the informal review or formal appeal shall not be applied to the cost report database as a whole or to any other reimbursement amounts influenced by the cost report database as a whole until the next reimbursement determination cycle, if applicable.

(c) Informal review.

(1) An interested party who disputes an action or determination under this chapter may request an informal review under this section. The purpose of an informal review is to provide for the informal and efficient resolution of the matters in dispute. An informal review is not a formal administrative hearing, but is a prerequisite to

obtaining a formal administrative hearing and is conducted according to the following procedures:

(A) HHSC Rate Analysis must receive a written request for an informal review by hand delivery, United States (U.S.) mail, or special mail delivery no later than 30 calendar days from the date on the written notification of the adjustments. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. HHSC Rate Analysis will extend this deadline if it receives a written request for the extension by hand delivery, U.S. mail, or special mail delivery no later than 30 calendar days from the date of the written notice of adjustments. The extension gives the requester a total of 45 calendar days from the date of the written notice of adjustment to file a request for an informal review. If the 45th calendar day is a weekend day, national holiday, or state holiday, then the 45th day is considered the next business day following the 45th calendar day. A request for an informal review or extension that is not received by the stated deadline will not be accepted.

(B) An interested party must, with its request for an informal review, submit a concise statement of the specific actions or determinations it disputes, its recommended resolution, and any supporting documentation the interested party deems relevant to the dispute. It is the responsibility of the interested party to render all pertinent information at the time of its request for an informal review.

(C) The written request for the informal review or extension must be signed by an individual legally responsible for the conduct of the interested party, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS [~~DHS~~] Form 2031 for the interested party on file at the time of the request, or a legal representative for the interested party. The administrator or director of the facility or program is not authorized to sign the request unless the administrator or director holds one of these positions. A request for an informal review that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted.

(2) On receipt of a request for informal review:

(A) The lead staff member coordinates the review of the information submitted by the interested party. Staff may request additional information from the interested party, which must be received in writing by the lead staff member no later than 14 calendar days from the date the interested party receives the written request for additional information. If the 14th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 14th calendar day is the final day the receipt of the additional information will be accepted. Information received after 14 calendar days may not be used in the panel's written decision unless the interested party receives written approval of the lead staff member to submit the information after 14 calendar days. A request for an extension to the 14 calendar day due date must be received by HHSC Rate Analysis prior to the 14th calendar day.

(B) Within 30 calendar days of the date a written request for informal review that complies with paragraphs (1) and (2) of this subsection is received or the date additional requested information is due or received, whichever is later, the lead staff member will send the interested party its written decision by certified mail, return receipt requested. If the 30th calendar day is a weekend day, national holiday, or state holiday, then the first business day following the 30th calendar day is the final day by which the written decision must be sent.

(d) Administrative hearings. An interested party who disagrees with the results of an informal review conducted under subsection (c) of this section may file a formal appeal of the review. The HHSC Appeals Division

[~~(1)~~] [~~For DHS contracted providers: The Hearings Department of the Texas Department of Human Services~~], Mail Code W-613, P.O. Box 149030, Austin, Texas 78714-9030, must receive the written request for a formal appeal from the interested party within 15 calendar days after the interested party receives [~~receiving~~] the written decision as specified in subsection (c) of this section. The written request for a formal appeal must state the basis of the appeal of the adverse action and include a legible copy of the written decision from the informal review referenced in subsection (c)(2)(B) of this section. The formal appeal is limited to the issues that were considered in the informal review process. The information from the interested party is limited to the pertinent information considered in the informal review process. Formal appeals are conducted in accordance with the provisions of 1 TAC §§357.481 - 357.490 [~~40 TAC §§79.1601-79.1610~~]. If there is a conflict between the applicable section of 1 TAC Chapter 357 (relating to Medical Fair Hearings) [~~40 TAC Chapter 79 (relating to Legal Services)~~] and the provisions of this chapter, the provisions of this chapter prevail.

[~~(2) For TDMHMR contracted providers: The Hearings Office of the Texas Department of Mental Health Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, must receive the written request for a formal appeal from the interested party within 15 calendar days after the interested party receives the written decision as specified in subsection (c) of this section. The written request for a formal appeal must state the basis of the appeal of the adverse action and include a legible copy of the written decision from the informal review referenced in subsection (c)(2)(B) of this section. The formal appeal is limited to the issues that were considered in the informal review process. The information from the interested party is limited to the pertinent information considered in the informal review process. Formal appeals are conducted in accordance with the provisions 25 TAC Chapter 411, Subchapter D (relating to Administrative Hearings of the Department in Contested Cases). If there is a conflict between the applicable section of 25 TAC Chapter 411, Subchapter D, and the provisions of this chapter, the provisions of this chapter prevail.~~]

(e) Lack of standing for formal appeal. Because the formal appeal is limited to issues considered in the informal review process, an informal review request that does not comply with subsections (c)(1)(A) - (C) [~~, (c)(1)(C), and (c)(2)(A)~~] of this section is not subject to further appeal under 1 TAC §§357.481 - 357.490 [~~either 40 TAC §§79.1601-79.1610 or 25 TAC Chapter 411, Subchapter D~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 424-6900

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CHAPTER 357. MEDICAL FAIR HEARINGS

The Texas Health and Human Services Commission (HHSC) proposes to repeal §§357.481 - 357.490, concerning Formal Ap-

peals, and to promulgate new §§357.481 - 357.498, concerning Hearings Under the Administrative Procedure Act.

Background and Justification

Administrative Law Judges (ALJs) conduct hearings in contested cases for state agencies. The ALJs of the HHSC Appeals Division conduct hearings under the Texas Administrative Procedure Act for HHSC, DADS, and DSHS. These rules govern the procedures required of the ALJs, agency attorneys, and outside parties and attorneys who are involved in these hearings. When the Health and Human Services agencies were consolidated pursuant to House Bill 2292, 78th Legislature, Regular Session, 2003, these rules were transferred from the DADS rule base without revision or otherwise being updated, at the same time that the Appeals Division was transferred to HHSC.

The rules in this subchapter conform to commission practice and fulfill the purpose intended by Government Code §531.0055, that the performance of administrative support services for health and human service agencies, including legal support, is the responsibility of HHSC. Pursuant to the consolidation called for in that legislation, the Appeals Division conducts hearings in a variety of appeals, including appeals from legacy health and human service agencies that were not required to send their appeals to the State Office of Administrative Hearings for a hearing and proposal for decision, as well as programs transferred to the commission from the former Department of Human Services.

Section-by-Section Summary

Section 357.481 provides information on when these rules are to be used, and what other procedures and rules might govern a contested case hearing.

Section 357.482 defines terms used in the rules.

Section 357.483 details the powers of an HHSC ALJ during the hearing process.

Section 357.484 sets out procedures to be used by anyone who receives notice of an adverse action for which the right to a hearing under the APA is granted by the statute, rules, or policy of a referring agency.

Section 357.485 sets out rules regarding the location of the hearing.

Section 357.486 provides a method for calculating dates for deadlines imposed on the parties by these rules.

Section 357.487 lists categories of individuals who can represent the parties in the hearing process.

Section 357.488 outlines the manner in which documents must be filed with the ALJ and must be served on the parties.

Section 357.489 details the requirements that the agency must satisfy when sending the petitioner notice of the hearing date, time, and location and notice of the specific allegations underlying the agency's action.

Section 357.490 provides for the option of a pre-hearing conference which will be conducted according to Rule 166 of the Texas Rules of Civil Procedure.

Section 357.491 sets out the procedures and deadlines for a party to obtain procedural relief or to obtain a ruling or order outside the pre-hearing conference or hearing.

Section 357.492 sets out the procedures by which one party obtains facts or documents from the other party prior to the hearing.

Section 357.493 outlines general procedures for the hearing not addressed in more specific rules.

Section 357.494 outlines the evidentiary standards and process.

Section 357.495 details the procedures and grounds for dismissing a case and for proceeding when the party that does not have the burden of proof fails to appear at the hearing.

Section 357.496 outlines the procedures for the ALJ to issue a decision or final order without an evidentiary hearing.

Section 357.497 outlines the procedures and deadlines for the ALJ's issuance of a proposal for decision, and the parties' exceptions and replies.

Section 357.498 outlines procedures governing the issuance of final orders and the rehearing process.

Fiscal Note

Tracy Henderson, Chief Financial Officer, has determined that, for the first five-year period the proposal is in effect, there will be no fiscal implications for state government or local governments as a result of enforcing or administering the repeal and new sections.

Public Benefit

Paul Leche, Special Counsel for Appeals, has determined that, for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of promulgating the proposed repeal and new rules for Chapter 357, Subchapter I, will be that outside parties and their attorneys, and all other members of the public who are involved in the contested case hearing process at HHSC will have clear and up-to-date procedures to follow.

Small and Micro-Business Impact Analysis

There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the repeal and new sections, because the proposal increases flexibility for providers and does not add any new requirements for businesses. There is no anticipated economic cost to persons who are required to comply with the proposal. There is no anticipated effect on local employment in geographic areas affected by the proposal.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a section of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Questions about the content of this proposal may be directed to Paul Leche at (512) 487-3315 in HHSC's System Legal

Services Office. Written comments on the proposal may be submitted to Paul Leche, Texas Health and Human Services Commission, Mail Code 1100, 4900 North Lamar Boulevard, Austin, Texas 78759, by fax to (512) 424-6586, or by e-mail to paul.leche@hhsc.state.tx.us, within 30 days of publication in the *Texas Register*.

SUBCHAPTER I. FORMAL APPEALS

1 TAC §§357.481 - 357.490

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeal is proposed under Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeal affects Human Resources Code §§23.004, 32.034, and 32.039, and Government Code §2105.204 and §2105.302. No other statutes, articles, or codes are affected by these proposed repeal.

§357.481. Definitions.

§357.482. Computation of Time.

§357.483. Venue.

§357.484. Notice of Adverse Action.

§357.485. Request for a Hearing.

§357.486. Notice of Hearing.

§357.487. Administrative Law Judge.

§357.488. Other Procedures.

§357.489. Proposals for Decision, Final Decisions, and Final Orders.

§357.490. Motions for Rehearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 357. HEARINGS

SUBCHAPTER I. HEARINGS UNDER THE ADMINISTRATIVE PROCEDURE ACT

1 TAC §§357.481 - 357.498

The new rules are proposed under Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The new rules affect Human Resources Code §§23.004, 32.034, and 32.039, and Government Code §2105.204 and §2105.302. No other statutes, articles, or codes are affected by these proposed new rules.

§357.481. Application of this Subchapter.

(a) Hearings under this subchapter shall be conducted in accordance with the Texas Administrative Procedure Act (APA), Chapter 2001 of the Texas Government Code.

(b) Unless otherwise required by subsection (a) of this section, the rules of this subchapter govern the procedures of hearings under this subchapter, except the judge may:

(1) apply a procedural hearing rule of the referring agency when the matter at issue is not addressed in this subchapter;

(2) apply the Texas Rules of Civil Procedure when the matter at issue:

(A) is not addressed in this subchapter; and

(B) is not addressed in a procedural hearing rule of the referring agency; or

(3) determine that the matter at issue is governed by other law.

§357.482. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) APA--the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

(2) Adverse action--an action for which the right to a hearing under the Administrative Procedure Act is granted by the statute, rules or policy of a referring agency.

(3) HHSC--the Texas Health and Human Services Commission.

(4) Judge--a licensed attorney appointed by the director of the HHSC Appeals Division to preside over the case.

(5) Referring agency--the HHSC agency taking the action and that issues the notice of adverse action, or the state agency that otherwise refers the matter to the HHSC Appeals Division for a hearing under this subchapter. HHSC agency includes the Texas Health and Human Services Commission, the Texas Department of Aging and Disability Services, the Texas Department of Assistive and Rehabilitative Services, the Texas Department of Family and Protective Services, and the Texas Department of State Health Services.

(6) SOAH--the Texas State Office of Administrative Hearings.

§357.483. Powers and Duties of the Judge.

(a) The judge is a designee of the HHSC Executive Commissioner for purposes of:

(1) issuing default, final, and other orders, and

(2) ruling on any motions for rehearing.

(b) The judge shall have the authority and the duty to:

(1) regulate pre-hearing matters and the hearing;

(2) conduct a full, fair, and impartial hearing;

(3) take action to avoid unnecessary delay in the disposition of the proceeding; and

(4) maintain order, including regulating the conduct of the parties, authorized representatives, witnesses, observers, and other participants.

(c) The judge may issue any order in the interest of justice that is necessary to protect the person or party seeking relief from undue burden, unnecessary expense, harassment, or invasion of personal, constitutional, or property rights.

(d) The judge has no authority to declare state statutes or rules, or federal statutes or regulations, invalid.

§357.484. Request for a Hearing.

(a) Who may file. Any person who has received notice of adverse action may file a request for a hearing.

(b) Time for filing. A person must file a written request for a hearing with the HHSC Appeals Division so that it is received within 15 days from the date the person receives the referring agency's notice of adverse action. If a person does not file the hearing request in accordance with this section, the judge may deny the request.

(c) Form of request. The request for hearing must:

(1) be in writing, in the form of a petition or letter;

(2) state the basis for the appeal of the adverse action; and

(3) include a legible copy of the notice of adverse action. If a person does not provide a copy of the notice of adverse action within 15 days from the date the hearing request is filed, the judge may deny the hearing request.

(d) Referral to SOAH. Upon receipt of a request to set a hearing at SOAH, the director of the HHSC Appeals Division will transfer the case to SOAH for a hearing and a proposal for decision within a reasonable time for disposition. In order for a case to be eligible for such a transfer, the director of the HHSC Appeals Division must determine that such transfer is required by the referring agency's rules, statute or policies. Transferring a case to SOAH does not waive the referring agency's right to assert any claims or defenses, including lack of jurisdiction or failure of the petitioner to comply with a statutory requirement.

§357.485. Venue.

(a) General venue. The judge shall conduct the hearing in Austin, Texas unless the judge grants a change of venue in accordance with subsection (b) of this section.

(b) Change of venue. A party may file a motion to transfer venue. The judge may grant the motion to change venue upon consent of the parties or upon a showing of good cause. Good cause includes, but is not limited to, the following:

(1) the case arose at a location closer to an HHSC office outside Austin, Texas;

(2) a majority of the witnesses reside more than 100 miles from Austin, Texas; or

(3) judicial and party resources will be conserved by the change of venue.

§357.486. Computation of Time.

In computing any period of time under this subchapter, the period begins on the day after the act or event in question and concludes either:

(1) on the last day of the period; or

(2) if the last day of the period is a Saturday, Sunday, or official State holiday, on the next day that is not a Saturday, Sunday, or official State holiday.

§357.487. Representation of Parties.

(a) Respondent. A licensed attorney for the referring agency represents the referring agency.

(b) Petitioner. Any of the following persons may represent the petitioner:

(1) the petitioner;

(2) an attorney for the petitioner, upon filing of a notice of representation with the judge and service on the other party; or

(3) a person designated by the petitioner in writing to the judge.

(c) Attorney not required. A petitioner is not required to have an attorney to appear and participate at a hearing. Neither HHSC nor a referring agency will provide an attorney to represent a petitioner.

(d) Change in representation. A party wishing to change its representative must file a written notice of substitution of representative with the judge. An attorney wishing to withdraw from representing a party must do so in accordance with the Texas Rules of Civil Procedure.

§357.488. Filing and Service of Documents.

(a) Filing of documents. A party must file with the judge all documents relating to any pending proceeding and must serve a copy on the other party. If the HHSC Appeals Division has transferred the case to SOAH, the party must also file the documents with SOAH.

(b) Documents are considered filed only when received by the HHSC Appeals Division by 5:00 p.m. on a business day. A document received after 5:00 p.m. on a business day is considered filed on the next business day.

(c) Service. Every document required to be served under these rules, the APA, or an agency's statute or rules, may be served by any of the following methods to a party or its representative:

(1) hand-delivery;

(2) courier-receipted delivery;

(3) certified or registered mail; or

(4) facsimile transmission. Service to the petitioner or its representative shall be made to the petitioner or representative's last known address or facsimile number as shown by the referring agency's records.

(d) Parties and their representatives shall immediately notify the judge of any change in mailing address, telephone number, or facsimile number.

(e) When service is by mail, three days shall be added to any time period in which service is to be accomplished.

§357.489. Notice of Hearing.

(a) The referring agency must give the petitioner written notice of hearing in accordance with §2001.052, Texas Government Code.

(b) The referring agency must serve the notice of hearing on the petitioner or petitioner's representative by any of the following methods using the petitioner's or representative's last known address or facsimile number as shown by the referring agency's records:

(1) hand-delivery;

(2) courier-receipted delivery;

(3) certified or registered mail; or

(4) facsimile transmission.

(c) The notice of hearing shall include a disclosure, in at least twelve-point, bold-face type, that the factual allegations listed in the notice of adverse action could be deemed admitted, and the relief sought might be granted by default against a party that fails to appear.

§357.490. Pre-hearing Conference.

(a) On the motion of a party or on the judge's own motion, the judge may direct the parties to appear in person, by telephone, or by videoconference for a pre-hearing conference.

(b) A pre-hearing conference under this subchapter shall be conducted in accordance with Rule 166, Texas Rules of Civil Procedure.

§357.491. Motions.

(a) Unless the request for relief is made on the record at a pre-hearing conference or hearing, a party must file a motion to change a setting, obtain a ruling or order, or obtain any other procedural relief under this subchapter.

(b) A party must file all motions in writing no later than seven days before the date of the hearing or setting. For good cause shown, the judge may consider a motion filed after this deadline.

(c) A party must file any responses to a motion in writing and no later than the earlier of:

(1) five days after receipt of the motion; or

(2) the date and time of the hearing.

§357.492. Discovery and Subpoenas.

(a) Parties may begin discovery under the APA and, to the extent not inconsistent with the APA, the Texas Rules of Civil Procedure, immediately after the filing of a request for hearing. The judge may establish deadlines for discovery requests and responses.

(b) For good cause shown, the judge may issue a subpoena at the written request of a party. The party requesting the subpoena is responsible for preparation and service of the subpoena. The judge may prepare the subpoena for a party if an attorney does not represent the party. The subpoena may require the attendance of witnesses and the production of books, records, papers, or other objects that are necessary and proper for the purposes of the proceedings.

(c) If a person fails to comply with a subpoena issued under subsection (b) of this section, the requesting party may bring suit to enforce the subpoena in a district court in Travis County or the county in which the hearing is conducted.

§357.493. Conduct of Hearing.

(a) Unless otherwise required by law, all contested case proceedings are open to the public, except the judge may take necessary steps to limit attendance due to any physical limitations of the hearing facility.

(b) The referring agency has the burden of proof unless otherwise specified by statute or rule. The party with the burden of proof presents evidence first, unless the judge orders otherwise. The burden of proof is by a preponderance of the evidence unless otherwise provided by statute or rule.

(c) The referring agency is normally responsible for providing reasonable accommodation for an individual with limited English proficiency or for disclosed disabilities. The party requesting reasonable accommodation shall do so in writing to the judge at least seven days before the hearing or setting. For good cause shown, the judge may consider a request filed after this deadline. The judge determines when an agency shall provide a reasonable accommodation.

(d) The judge may issue an order permitting a party or witness to appear by telephone. The party seeking to participate by telephone must file a motion no later than seven days before the hearing. The motion must state the reason for the request and contain the telephone number where the party or witness can be reached. The non-moving party must file a response to the motion no later than two days after receipt of the motion. Based on a consideration of good cause, the judge issues an order granting or denying the request no later than two days before the hearing.

(e) The judge may issue an order permitting a party or witness to appear by videoconference. The party seeking to participate by videoconference must file a motion no later than 14 days before the hearing or setting. The motion must state the reason for the request and the city of residence of the party or witness. The non-moving party must file a response to the motion no later than two days after receipt of the motion. In deciding whether to grant the request, the judge may consider any relevant matter including the availability of videoconferencing facilities or equipment.

(f) When the judge grants a motion under subsection (d) or (e) of this section, a party must file with the judge and serve the other party with all documentary evidence to be offered at the hearing or setting, at least three days before the hearing or setting. The judge may amend this filing deadline by written order.

(g) When the judge grants a motion under subsection (d) or (e) of this section, the judge may rule that any of the following is a failure to appear and grounds for default, if it occurs for more than ten minutes after the scheduled hearing time:

(1) failure to answer the telephone or videoconference line;

(2) failure to free the telephone or videoconference line for the proceeding; or

(3) failure to be ready to proceed with the hearing or pre-hearing conference as scheduled.

(h) Participants and observers shall conduct themselves with dignity, shall show courtesy and respect for one another and for the judge, and shall follow any additional guidelines of decorum prescribed by the judge. The judge may take appropriate action to maintain and enforce proper conduct and decorum, including:

(1) issuing a warning;

(2) excluding a person from the proceeding; or

(3) recessing the proceeding.

(i) The judge shall make a record of all proceedings, except the judge may waive the making of a record of a pre-hearing conference and may reflect the actions taken in a written order.

(j) On the written request by a party, or at the request of the judge, a court reporter shall prepare a transcript of all or part of the proceedings. The party requesting the transcript shall pay the costs unless the parties agree to share the costs. When only the judge requests a transcript, the referring agency shall pay the costs unless the parties agree to share the costs.

§357.494. Evidence.

(a) The provisions of Texas Government Code §§2001.081 - 2001.086 shall govern the admission or exclusion of evidence.

(b) Exclusion of witnesses. At the request of a party, or on the judge's motion, the judge may order witnesses excluded from the

hearing so they cannot hear the testimony of other witnesses. This subsection does not authorize exclusion of a party, a party's spouse, or a person who a party shows to be essential to the presentation of its case.

(c) Stipulations. Subject to the judge's approval, the parties may stipulate to any factual, legal, or procedural matters, subject to the following requirements:

(1) The parties must state in a written motion any agreements that would modify a schedule or procedure previously ordered by the judge.

(2) The parties may file a stipulation in writing or enter it on the record. The judge may require additional development or clarification of a stipulation.

(3) The judge may choose not to enforce an agreement between the parties either for good cause, or if the agreement is not in writing, signed, and filed with the judge, or entered on the record.

§357.495. Default and Dismissal.

(a) Default. The judge may proceed on a default basis if a party without the burden of proof fails to appear. The factual allegations listed in the notice of hearing may be deemed admitted. The party with the burden of proof must show that:

(1) proper notice under §357.489 of this title (relating to Notice of Hearing) was provided to the defaulting party; or

(2) a statute or rule authorizes service of the notice by sending it to the party's last known address as shown by the agency's records, and there is credible evidence that the notice was sent by first class mail to that address.

(b) Reopening. A party may file a motion to set aside a default and reopen the record no later than ten days after the hearing, if a final order has not been issued. The judge may grant the motion for good cause shown.

(c) Dismissal. In response to a party's motion or after a judge notifies the parties of an intent to dismiss a case, the judge may dismiss a case, or a portion of the case, for:

(1) lack of jurisdiction;

(2) failure of a party to appear within ten minutes of the scheduled hearing time;

(3) failure by a party to prosecute the case in accordance with a requirement of statute, rule, or order of the judge;

(4) the cause of action being moot;

(5) failure to state a claim for which relief can be granted;

(6) failure to request the hearing in a timely manner according to §357.484 of this title (relating to Request for Hearing); or

(7) unnecessary duplication of proceedings.

§357.496. Summary Disposition.

(a) The judge may issue a proposal for decision or final order without an evidentiary hearing if the judge determines that:

(1) there is no genuine issue as to any material fact; and

(2) a party is entitled to a decision in its favor as a matter of law.

(b) A party seeking summary disposition shall file a motion in accordance with §357.491 of this title (relating to Motions). The motion shall contain the specific grounds, including:

(1) the applicable law; and

(2) the material facts that the moving party contends are undisputed, with specific reference to the supporting evidence.

(c) A party opposing a motion for summary disposition shall file a response in accordance with §357.491 of this title. The response shall contain the specific grounds, including:

(1) a statement of each material fact claimed by the opposing party to be disputed;

(2) a specific reference to the supporting evidence; and

(3) any dispute regarding the movant's assertion of what is the applicable law.

§357.497. Proposals for Decision, Exceptions, and Replies.

(a) Proposals for Decision. For cases referred by an agency other than HHSC, the judge issues a proposal for decision unless the law governing the case provides for a final order to be issued by the judge. The judge shall submit the proposal for decision to the final decision maker and furnish a copy to each party.

(b) Exceptions. A party must file exceptions to the proposal for decision within 15 days of the issuance of the proposal for decision, in accordance with section §357.488 of this title (relating to Filing and Service of Documents).

(c) Replies. A party must file a reply to exceptions within 15 days of the filing of the exception, in accordance with §357.488 of this title.

(d) Amendments. The judge shall make any amendments to the proposal for decision within 15 days of the deadline under subsection (c) of this section.

(e) Final Orders and Motions for Rehearing. When the judge issues a proposal for decision, the referring agency's rules govern final orders and motions for rehearing.

§357.498. Final Orders and Rehearing.

(a) Final Orders. The judge issues a final order for a case:

(1) referred by HHSC; or

(2) when the law governing the case provides for a final order to be issued by the judge.

(b) Notice of Final Order. Final orders are mailed by first class mail to the most recent address on file with the HHSC Appeals Division, and are presumed received on the third day after mailing. Final orders are mailed:

(1) to each party's representative, or

(2) if a party is not represented, to the party.

(c) Rehearing. A party must file any motion for rehearing in accordance with §357.488 of this title (relating to Filing and Service of Documents) on or before the 20th day after the final order is presumed received.

(d) Reply. A party must file any written reply to a motion for rehearing on or before the 30th day after the final order is presumed received.

(e) Order on motion. The judge shall rule on a motion for rehearing no later than the 45th day after the date the final order was mailed. Otherwise, the motion for rehearing is overruled by operation of law.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chief Counsel
Texas Health and Human Services Commission
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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.1 - 51.4, 51.8 - 51.10, 51.12 - 51.15

The Texas Animal Health Commission (commission) proposes amendments to Chapter 51, entitled "Entry Requirements," §§51.1 - 51.4, 51.8 - 51.10 and 51.12 - 51.15 to provide greater clarity to the rules and add, modify or remove requirements as provided for herein.

The modifications to the rules are identified below:

The Commission is adding §51.1(17) to provide a definition for Radio Frequency Identification Device (RFID) because this type of device is authorized to identify some animals being moved interstate.

The Commission is adding language to §51.2(a)(2) to require a permit requester to provide certain information in order to receive a valid permit. This is to address the issue of people calling after business hours to obtain a permit number provided in the recorded message without leaving the necessary information to ensure that Commission staff can follow up and verify entry.

The Commission is modifying §51.3(a), regarding exceptions from obtaining a permit and health certificate. The modification is to remove the exception that would allow dairy cattle to go through a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill. That exception is added for beef cattle 18 months of age and over delivered directly from a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill. This is to differentiate from dairy cattle, for which there are specific tuberculosis test requirements.

The amendment adds language to §51.3(a) by adding a new paragraph (9) for an exception to having a permit and health certificate for out of state feral swine consigned directly to slaughter.

In §51.3(c)(1) the Code of Federal Regulations reference was no longer correct and that provision is being amended to reference the correct part.

Section 51.3(c)(7) and (8) are deleted because those provisions duplicate similar language which already exists in §51.3(c)(1) and (2).

Section 51.4(b) regarding in-state participation in shows, fairs and exhibitions is being modified to exempt in state dairy cattle from having to meet the tuberculosis test requirements for out of state dairy cattle entering Texas. The purpose of the entry requirement is to protect the Texas dairy cattle from the risk of being exposed to Tuberculosis. However all Texas dairy animals were recently tested for Tuberculosis by the Commission and the state recently re-gained Tuberculosis Accredited Free status so there is not a need to require a test for their participation in an exhibition. The test requirement for out of state dairy cattle still applies if they participate in a Texas exhibition, show or fair.

In §51.8(a) the Commission is adding language requiring out of state cattle, being shipped to a Texas feedyard, to have official identification, from the state of origin. The reason is that Texas receives out of state cattle being shipped to slaughter, the vast majority of which do not have identification that may be traced to the state of origin. If the animals test positive for Brucellosis at slaughter, it is important to trace the animal back to the state of origin. If an animal tests positive for Brucellosis at slaughter, the state must be able to show the state of origin, otherwise, it might affect the state's goal toward achieving Brucellosis Free Status.

Section 51.8(b)(3) provides that "[a]ll sexually intact dairy cattle that are less than six months of age must obtain a entry permit from the Commission, as provided in §51.3(a), to a designated facility where the animals will be held until they are tested negative at the age of six months." The reference is incorrect and it is being changed to reflect the correct section, §51.2.

Section 51.8(b)(7) is marked for deletion because Texas has achieved Tuberculosis Free status eliminating the need for Tuberculosis test requirements for interstate movement of cattle from Texas. The USDA published in the Federal Register, on September 29, 2006, an interim rule amending their bovine tuberculosis regulations regarding State and zone classifications. In that rule, USDA raised the designation of Texas from modified accredited advanced to accredited-free. Because USDA determined that Texas meets the criteria for designation as an accredited-free State, USDA has classified the entire state of Texas as being an accredited free state for Tuberculosis; as a result, there are no testing requirements for Texas cattle moving interstate.

The amendment adds language to §51.9(b)(1) regarding identification requirements for fowl entering Texas. The revision is in response to the American Ostrich Association which requested that the Commission allow RFID tags or other permanent tags for identification purposes for those birds being moved into the state.

The amendment revises §51.10(a) of the Chronic Wasting Disease entry requirements by removing everything in capital letter format and restating the phrase in appropriate regulatory format. Texas Parks and Wildlife Department is referred to in the subsection in order to recognize its authority to prohibit the entry of species under their jurisdiction. RFID devices are added to §51.10(b) to allow them as forms of official identification.

The requirement in §51.12(b)(1) is being deleted because it duplicates the same statement in §51.12(a).

The revision to renumbered §51.12(b)(5)(D)(i), regarding sheep, corrects a grammatical error in the last adoption which used the word "of" that should have read "or."

The amendment adds a paragraph (6) to the entry requirements for equine in §51.13(a). New paragraph (6) adds an exemption for equine foals, under eight months of age, which are nursing and accompanying a negative dam with a current negative test. This also conforms to the Commission's current intra-state sales requirement.

The Texas Pork Producers request removing the vaccination requirement for Bratislava as a part of the combination

Leptospirosis vaccine as found in §51.14(c). Texas currently requires a vaccine that contains six different Leptospira strains: Bratislava, Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona. However, most states no longer include the Bratislava strain in their vaccine requirements but rather use a vaccine with the remaining five strains of Leptospirosis vaccine which are: Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

Pilgrim's Pride requests changing the rules to allow for broilers that have been vaccinated for Infectious Laryngotracheitis with a chick embryo vaccine to be transported to Texas for immediate slaughter. The change also specifies that the transportation route used for such poultry to slaughter be approved by the Commission. This provision would only apply to broilers because breeder birds can be vaccinated with a tissue culture vaccine that is acceptable by the State of Texas. Broilers, on the other hand, have to be vaccinated with a chick embryo type vaccine that is not currently authorized for use for entry into the state

FISCAL NOTE

Mike Jensen, Deputy Director for Administration and Finance, has determined that for the first five-year period the amendments are in effect, there will be no significant additional fiscal implications for state or local government as a result of enforcing or administering the amended rules. There will be no effect to individuals required to comply with the amendments as proposed. There will be no affect to small or micro businesses.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rules will be clear and concise regulations which can be found in one chapter. The impact to individuals is limited to ensuring that the health status of these animals is known which protects the livestock industry in this state.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that adoption of the proposed amendments will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. The amended rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comment@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the commission, by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

No other statutes, articles, or codes are affected by the amendments.

§51.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (16) (No change.)

(17) "Radio Frequency Identification Device (RFID)"--Official individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

(18) [~~(17)~~] Sponsor--An owner or person in charge of an exhibition, show or fair.

(19) [~~(18)~~] Waybill--A document used for livestock moving directly to a USDA specifically approved livestock market, quarantined feedlot, or slaughter plant or a document used for poultry moving directly to a federally inspected slaughter plant. The waybill contains the following information:

(A) name and address of owner or shipper;

(B) point of origin;

(C) number and type of livestock and/or poultry;

(D) purpose of movement; and

(E) destination.

§51.2. General Requirements.

(a) Entry permit requirements.

(1) All animals entering Texas from any state, territory, or foreign country shall have an entry permit unless accepted [~~excepted~~] by this chapter.

(2) Entry permit requests shall be directed to the commission by either writing to Texas Animal Health Commission, c/o Permits, P.O. Box 12966, Austin, Texas 78711-2966; or by telephoning (512) 719-0777 or 1-800-550-8242. In order to obtain a valid permit the permit requester must provide the commission information necessary to determine compliance with the entry for the animals to enter the state, the destination of the animal(s) as well as contact information for the requester.

(3) The entry permit number shall be written on a valid certificate of veterinary inspection by the issuing accredited veterinarian and the certificate must accompany the shipment. If a health certificate is accepted [~~excepted~~] by §51.3 of this chapter [~~Chapter~~] (relating to Exceptions), then the permit number shall be written or affixed onto the appropriate documents accompanying the shipment. The permit is valid for fifteen days after issuance.

(b) (No change.)

§51.3. Exceptions.

(a) Exceptions for a certificate of veterinary inspection and entry permit.

(1) Cattle 18 months of age and over delivered directly from the farm of origin to slaughter [~~or a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill~~];

(2) (No change.)

(3) Beef cattle 18 months of age and over delivered directly to a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill;

(4) [~~(3)~~] Steers, spayed heifers, cattle under 18 months of age, delivered to slaughter and accompanied by a waybill or to a livestock market by the owner or consigned there and accompanied by a waybill;

(5) [~~(4)~~] steers, spayed heifers and cattle under 18 months of age delivered to a feedlot for feeding for slaughter by the owner or consigned there and accompanied by a waybill;

(6) [~~(5)~~] Swine and poultry delivered to slaughter by the owner or consigned there and accompanied by a waybill;

(7) [~~(6)~~] Baby poultry which have not been fed or watered if from a national poultry improvement plan (NPIP) or equivalent hatchery, and accompanied by NPIP Form 9-3 or Animal and Plant Health Inspection Service (APHIS) Form 17-6, or have an approved "Commuter Poultry Flock Agreement" on file with the state of origin and the Texas Animal Health Commission; and

(8) [~~(7)~~] Steers, spayed heifers, and cattle under 18 months of age originating in New Mexico which are accompanied by a New Mexico official certificate of livestock inspection.

(9) Feral Swine being shipped directly to slaughter. Feral swine shall be shipped in a sealed vehicle accompanied by a 1-27 permit with the seal number noted on the permit also providing the number of head on the permit.

(b) (No change.)

(c) Exceptions for an entry permit.

(1) Swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under the Code of Federal Regulations, Title 9, Part 71.20 [~~76~~];

(2) - (6) (No change.)

[~~(7) Entry permits are not required for swine consigned from out-of-state directly to slaughter or from an out-of-state premise of origin to a Texas livestock market specifically approved under Title 9 of the Code of Federal Regulations, Part 76.~~]

[~~(8) Entry permits are not required for swine that originate from an approved Swine Commuter Herd.~~]

(7) [~~(9)~~] Exotic fowl from out of state, except ratites.

§51.4. Shows, Fairs and Exhibitions.

(a) Out-of-state or area origin.

(1) - (2) (No change.)

(3) Cattle. Vaccination for brucellosis is not required for cattle from Class Free States. Texas origin dairy cattle are not required by §51.8(b)(3) of this title (relating to Cattle) to test for tuberculosis to participate in a show, fair or exhibition within this state.

(4) (No change.)

(b) In-state origin.

(1) - (2) (No change.)

(3) Other livestock shall meet the same requirements as for those entering from out-of-state, and be accompanied by a certificate of veterinary inspection when entering shows, fairs, and exhibitions that are determined to be interstate. Texas origin dairy cattle are not required by §51.8(b)(3) of this title to test for tuberculosis to participate in a show, fair or exhibition within this state. Poultry see subsection [~~§51.4~~] (a)(2) of this section [~~Section~~].

(4) (No change.)

§51.8. Cattle.

(a) Brucellosis requirements. All cattle must meet the requirements contained in §35.4 of this title (relating to Entry, Movement and Change of Ownership). Cattle being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin.

(b) Tuberculosis requirements.

(1) - (2) (No change.)

(3) All sexually intact dairy cattle, that are 6 months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle that are less than six months of age must obtain an [~~a~~] entry permit from the Commission, as provided in §51.2 [~~§51.3~~](a) of this title (relating to General Requirements), to a designated facility where the animals will be held until they are tested negative at the age of six months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. In addition all sexually intact dairy cattle originating from a state or area

with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or areas with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

(4) - (6) (No change.)

~~[(7) All Texas origin breeding cattle moving interstate from Texas, including cows, bulls, bred heifers, and other cattle for use as breeding animals, shall be officially identified and pass a negative tuberculosis test within 60 days of movement from the state. These requirements are a minimum and the receiving state for such cattle shipments may have additional requirements. Cattle which are exempt from the test requirement include:]~~

~~[(A) Cattle that originate from an Accredited herd, or]~~

~~[(B) Cattle that originate from a herd which has passed a herd of origin test for tuberculosis within the previous 6 months, or]~~

~~[(C) Nursing calves moving with TB test negative dams, or]~~

~~[(D) Cattle that are moved direct to slaughter.]~~

§51.9. Exotic Livestock and Fowl.

(a) (No change.)

(b) Exotic Fowl. Ratites entering the State of Texas shall meet the specific requirements listed in paragraphs (1) - (4) of this subsection:

(1) Each bird will be individually identified with either an RFID device, a permanently attached tag or an implanted electronic device (microchip). The identification will be shown on the certificate of veterinary inspection along with the location and name brand of the implanted electronic device. If an animal has more than one implanted microchip, then the location, microchip number, and name brand of each will be documented on the certificate of veterinary inspection. Birds or hatching eggs must originate from flocks that show no evidence of infectious disease and have had no history of Avian Influenza in the past six months. In addition, each bird must be tested and found to be serologically negative for Avian Influenza and Salmonella pullorum-typhoid from a sample collected within 30 days of shipment. A bird serologically positive for Avian Influenza may be admitted if a virus isolation test via cloaceal swab conducted within 30 days of shipment is negative for Avian Influenza. The testing is to be performed in a state approved diagnostic laboratory in the state of origin. Serologically positive birds admitted under this section must be held under quarantine on the premise of destination in Texas for virus isolation retest.

(2) - (4) (No change.)

§51.10. Cervidae.

(a) Chronic Wasting Disease (CWD). If either the Commission or Texas Parks and Wildlife Department issues a quarantine or a prohibition on susceptible species entering the state, that quarantine or prohibition supersedes these rules for the quarantined species. [~~THESE ENTRY REQUIREMENTS ARE NOT IN EFFECT IF THE COMMISSION HAS ISSUED A QUARANTINE PROHIBITING ENTRY OF CERVIDAE BECAUSE OF EXPOSURE TO CWD.~~] All black-tailed deer and elk (or other cervid species determined to be susceptible to CWD, which means an animal that has had a diagnosis of CWD confirmed by means of an official test conducted by a laboratory approved by USDA/APHIS) shall obtain an entry permit from the Commission prior to entering Texas. All mule deer and white-tailed deer are also required to obtain an entry permit from the Texas Parks and Wildlife Department in order to enter the state. All requests for entry must be made in writing and accompanied with the information necessary to support import qualifications of the animal(s). This should be received by the TAHC at least 10 working days prior to the proposed entry date. The processing of the application can be expedited by assuring that all of the necessary documentation has been provided and that the necessary staff is available for review. The application must be accompanied by an owner's statement stating that to his/her knowledge the animals (or donor animals) to be imported have never come in contact with equipment or resided on a premise where CWD was ever diagnosed.

(b) Requirements for entry. The applicant must identify the herd of origin and the herd of destination on both the permit application and the certificate of veterinary inspection. The cervid(s) to be imported into this state, shall be identified to their herd of origin by a minimum of two official/approved unique identifiers to include, but not limited to, legible tattoo, USDA approved eartag, breed registration, RFID device or other state approved permanent identification methods. If a microchip is used for identification, the owner shall provide the necessary reader. The shipment shall be accompanied by a certificate of veterinary inspection completed by an accredited veterinarian. Additionally, the herd of origin must meet the following criteria:

(1) - (3) (No change.)

(c) - (d) (No change.)

§51.12. Sheep.

(a) (No change.)

(b) Scrapie.

~~[(1) Breeding rams, 6 months of age and older, shall have a negative (ELISA) test for Brucella ovis within 30 days of shipment and the negative results recorded on the Certificate of Veterinary Inspection.]~~

(1) [~~(2)~~] Animals to be identified by official eartag.

(A) All breeding or exhibition animals shall have official premises, or approved USDA, eartag in place and recorded, except: Registered goats with a registration tattoo and accompanied by registration papers

(B) All animals in slaughter channels shall have official premises, or approved USDA, eartag in place, except:

(i) Sheep under 18 months of age

(ii) Goats that have not commingled with sheep

(2) [~~(3)~~] Animals originating from scrapie-affected flocks, scrapie-positive, suspect, exposed, and/or high risk animals, or sheep originating from Inconsistent States, may be granted entry into Texas on a case-by-case basis only after permission of the Executive Director of TAHC or the Designated Scrapie Epidemiologist.

(3) [~~(4)~~] Animals originating from Inconsistent States (without an active scrapie surveillance and control program) may enter the State of Texas only if:

(A) Obtain an entry permit,

(B) Consigned directly to a terminal feedlot,

(C) Consigned directly to slaughter.

(4) [~~(5)~~] All blackface ovine females and all blackface crossbred females, except hair sheep, imported into the State of Texas for breeding purposes shall originate from a Scrapie Certified Free Flock or have documentation supporting that the animals are of the genotype RR at codon 171 or AA at codon 136 and QR at codon 171.

(5) [~~(6)~~] Certificate of Veterinary Inspection: Information on the Certificate of Veterinary Inspection shall include:

(A) Complete information on the consignor, consignee, and flock of origin, including the origination and destination addresses.

(B) Date of inspection

(C) Number of animals in the consignment and description of the animals (breed, gender, and other distinguishing characteristics).

(D) Premise eartag identification number or official USDA eartag number, or (if goats accompanied by registration papers) registration tattoo).

(i) Animals for Breeding Purposes or Exhibition--All premises identification numbers or [~~of~~] official USDA eartag numbers, or registration tattoos (in the accompaniment of registration papers) shall be recorded.

(ii) Animals in Slaughter Channels--identification must be present on the animals but the numbers do not need to be recorded.

(E) Statement of the purpose for transporting the animals (for exhibition, breeding purposes, or slaughter)

(F) A statement by the accredited veterinarian issuing the Certificate that the animals are not exhibiting clinical signs associated with any infectious disease, including scrapie, at the time of examination.

(G) A statement by the accredited veterinarian issuing the Certificate indicating if the animal(s) are not from a scrapie affected, high risk, source, or exposed flock.

§51.13. Equine.

(a) Equine infectious anemia (EIA) requirements. All horses, mules, asses, ponies, zebras and all other equidae shall have a certificate of veterinary inspection and proof of a negative EIA test within the previous 12 months prior to entering Texas. The negative test results together with the name of the laboratory conducting the test must be shown on the certificate of veterinary inspection. Alternatively, a completed VS Form 10-11 (Equine Infectious Anemia Laboratory Test) may be attached to the certificate of veterinary inspection. Only test results from USDA-approved laboratories are acceptable. Exceptions to these test requirements are:

(1) - (5) (No change.)

(6) foals, under eight months of age, accompanying and nursing a dam with a negative test within the last twelve months.

(b) (No change.)

§51.14. Swine.

(a) - (b) (No change.)

(c) Additionally, breeding swine shall have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis-free herd or state and shall be vaccinated within the previous 30 days with Leptospirosis vaccine containing the following strains: [~~Bratislava,~~] Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

(d) - (e) (No change.)

§51.15. Poultry.

(a) (No change.)

(b) Live domestic poultry, except those entering for slaughter and processing at a slaughter facility owned or operated by the owner of the poultry entering, may enter Texas only under the following circumstances:

(1) - (4) (No change.)

(5) Live domestic poultry broilers from states affected with Infectious Laryngotracheitis and vaccinated with chick embryo vaccine may enter Texas for immediate slaughter and processing only under the following conditions. The request for authorization to bring poultry into the state must be in writing and shall include a proposed route to slaughter that would not pose a disease risk to Texas poultry. The initial request must be approved by the Executive Director prior to entry of the poultry. All shipments of poultry qualifying for entry under this subsection shall have an entry permit in accordance with §51.2 of this title (relating to General Requirements) and documentation of the origin of the shipment.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606674
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 719-0700

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 9. RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS, APPEALS, AND RULEMAKINGS

SUBCHAPTER B. CONTESTED CASE HEARINGS

7 TAC §9.27

The Finance Commission of Texas (the commission) proposes amendments to §9.27, concerning facts not reasonably susceptible of proof under Rules of Evidence.

Section 9.27 provides that the administrative law judge may admit evidence in administrative proceedings that is not reasonably susceptible of proof under the rules of evidence if certain requirements are satisfied. The proposed amendments to §9.27 are nonsubstantive and conform citations to or reference current law. Specifically, the proposed amendments reflect that Federal Rule of Evidence 803(24) has been recodified with minor revisions as Federal Rule of Evidence 807, and that the former Texas civil and criminal rules of evidence have been combined so former Rule 803, Texas Rules of Civil Evidence, is now simply Rule 803, Texas Rules of Evidence.

Larry Craddock, administrative law judge for the commission and for the Texas Department of Banking, Office of the Consumer Credit Commissioner, and Department of Savings and Mortgage

Lending (finance agencies) has determined that for each year of the first five years that the proposed amendments are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Craddock also has determined that, for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendments will be the replacement of obsolete statutory references with correct citations. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small businesses or micro-businesses.

Comments concerning the proposed amendments should be submitted within 31 days of publication to Larry Craddock, Administrative Law Judge, Finance Commission of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to larry.craddock@banking.state.tx.us.

The amendments are proposed pursuant to Government Code §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The amendments are also proposed under specific rulemaking authority contained in the substantive statutes administered by the finance agencies under the jurisdiction of the commission, including Finance Code, §§11.301, 11.302, 11.304, 11.306, 14.157, 31.003, 66.002, 96.002, 151.102, 154.051, 156.102, 181.003, 201.003, 342.551, 348.513, 371.006, and 396.051, and Health and Safety Code, §711.012(a) and §712.008.

Government Code, Chapter 2001, is affected by the proposed amendments. Finance Code, Titles 3 - 5, and Finance Code, Chapter 151, and Health and Safety Code, Chapters 711 and 712, are affected by the proposed amendments to the extent the provisions affect administrative hearings before a finance agency or the commission.

§9.27. Facts Not Reasonably Susceptible of Proof under Rules of Evidence.

The administrative law judge will treat the Texas Administrative Procedure Act exception under Government Code, §2001.081 (providing for the admission of evidence "not admissible under the Texas Rules of [~~Civil~~] Evidence if of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs"), as identical to Federal Rule of Evidence 807 [~~803(24)~~], i.e., the administrative law judge will admit evidence pursuant to this exception only if the administrative law judge finds that:

(1) although not covered by any of the exceptions listed in Rule 803, Texas Rules of [~~Civil~~] Evidence, the statement has equivalent circumstantial guarantees of trustworthiness to the exceptions listed in the rule;

(2) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606764

Sarah J. Shirley
General Counsel
Finance Commission of Texas
Proposed date of adoption: February 23, 2007
For further information, please call: (512) 475-1300

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 25. PREPAID FUNERAL CONTRACTS

SUBCHAPTER B. REGULATION OF LICENSES

7 TAC §25.10

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department) proposes amendments to §25.10, concerning recordkeeping requirements for insurance-funded contracts.

Section 25.10 establishes the recordkeeping requirements that apply to insurance-funded prepaid funeral benefits contracts. As a general matter, the proposed amendments are non-substantive. As explained in this preamble, the proposed amendments set out more specifically the records a permit holder must maintain with respect to insurance-funded contracts and essentially reflect the department's current construction and application of the section's requirements. The proposed amendments also apply plain language writing principles by using more direct language, eliminating unnecessary verbiage and using terms consistently, and incorporate current terminology. For example, the proposed amendments use the statutory term "prepaid" rather than "preneed".

Section 25.10(a) sets out to whom the section's requirements apply and where records must be made available for examination by the department. The proposed amendments to subsection (a) clarify that the required records must be made available at the beginning of the examination.

Section 25.10(b) establishes recordkeeping requirements with respect to a permit holder's general files. The proposed amendments to paragraphs (1), (7), (8), (10), (11), (12), and (13) of subsection (b) clarify and set out more specifically the records that must be maintained in accordance with current department practice. Additionally, the proposed amendments to paragraphs (5) and (11), which apply to a permit holder that is an insurance company or controls or is controlled by an insurance company, reduce the number of consolidated financial statements and examination reports that must be maintained. The proposed amendments clarify that the permit holder must maintain consolidated financial statements filed with, and examination reports of, the insurance regulator of the insurance company's state of domicile only, not the regulators of all states in which the insurance company does business or is required to file. The proposed amendments to paragraph (11) also recognize and provide for the situation in which the law of the insurance company's state of domicile does not permit disclosure of the insurance regulator's examination report and related correspondence.

Section 25.10(c) establishes recordkeeping requirements with respect to the prepaid funeral benefits contract file a permit

holder must maintain on each contract purchaser. The proposed amendments clarify that files related to outstanding contracts and non-forfeiture or out-of-force policies must be capable of being retrieved separately. The proposed amendments to subsection (c) also clarify and set out more specifically the records required to be maintained in individual files for outstanding contracts, matured contracts, cancelled contracts, and reduced paid-up or extended term insurance policies under current department practice. For example, the proposed amendments to paragraph (3)(A) clarify the specific documents that must be maintained in a file related to a matured contract for which services were provided by the contracted funeral provider, a provider related to the contracted provider, or under an executed successor provider assignment. The proposed amendments to paragraph (3)(B) specify the documents that the department requires be maintained in a matured contract file for which services were provided by some other person. The proposed amendments to paragraph (5) specify the documentation required in files pertaining to reduced paid-up or extended term insurance policies. Additionally, the proposed amendments to paragraph (4) shorten the minimum retention time for a file related to a canceled contract from three years to the period since the last examination.

Section 25.10(e) sets out the records a permit holder must maintain regarding its prepaid funeral benefits operations for both new and conversion sales. The proposed amendments to subsection (e) clarify and set out more specifically the records that must be maintained in accordance with current department practice. Additionally, paragraphs (1), (3), and (4), which require a permit holder to maintain a historical contract register, and in-force policy register, and reports detailing out-of-force and non-forfeiture policies, respectively, reflect the department's current requirement that the registers and reports be formatted in columns with headings as specified. Finally, the proposed amendments to paragraphs (3) and (4) require that the register and reports required under those paragraphs be prepared and balanced, as applicable, on a quarterly basis. However, as explained further in this preamble, a permit holder may apply to the commissioner for approval to prepare and reconcile the records less frequently.

Section 25.10(f) relates to conversions. The proposed amendments specify that a permit holder must maintain a copy of the conversion order and related final post-enhancement schedules.

Section 25.10(g) sets out certain corporate records that a permit holder must maintain. The proposed amendments require a permit holder that maintains its records electronically to provide evidence of a disaster recovery plan and offsite data storage capabilities.

Section 25.10(h) provides for certain exceptions to the section's requirements. The proposed amendments to paragraph (3) of subsection (h) provide that a permit holder may apply to the commissioner for an exception, including specifically the requirement that records be maintained and reconciled quarterly. The proposed amendments also clarify that the commissioner may revoke an exception for good cause.

Section 25.10(i) relates to the process by which a permit holder may request and obtain commissioner approval to change the location where required records are maintained or examinations are performed. The proposed amendments to subsection (i) specifically authorize the commissioner to revoke a records location approval if the commissioner determines such action to be necessary to effectively regulate the permit holder and examine records and policies. The proposed amendments enable the commissioner to require that records be maintained in Texas if, for example, the department is subject to budget restrictions that limit or prohibit out-of-state travel.

Under §25.10(j), the documents and records required to be maintained under the section must be filed, and cash received posted, within 30 days of receipt. The proposed amendments to subsection (j) provide that a form of payment other than cash must also be posted within 30 days of receipt.

The department provided a draft of the proposed amendments to and solicited informal comments from permit holders that sell or administer insurance-funded prepaid funeral benefits contracts. Although the department made revisions to the draft in response to comments, the department has declined to adopt the suggestions of certain commenters that many of the recordkeeping requirements be eliminated. These commenters argue that, as a general matter, insurance-funded contracts should not be regulated to the same extent as trust-funded contracts and not be subject to similar comprehensive recordkeeping requirements because of the unique nature of insurance as a funding mechanism.

Stephanie Newberg, Deputy Commissioner of the Texas Department of Banking, has determined that, for each year of the first five years that the amendments as proposed are in effect, there will be no fiscal implication for state or local governments.

Ms. Newberg has further determined that, for each year of the first five years that the amendments as proposed are in effect, the anticipated public benefit will be updated and more specific and understandable regulations that will enhance the department's enforcement of, and permit holder compliance with, the regulatory requirements of Finance Code, Chapter 154. For each year of such first five years, there will be no economic costs to persons required to comply with the proposed amendments. The proposed requirement that registers and records be prepared and reconciled quarterly could conceivably involve an additional cost to a permit holder, but most permit holders are already in compliance with this requirement. Further, the proposed amendments authorize the granting of an exception to the requirement for good cause. Finally, Ms. Newberg has determined that the proposed amendments will not have an adverse effect upon small businesses or micro-businesses.

To be considered, comments concerning the proposed amendments must be submitted within 30 days of publication to Sarah Shirley, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by email to sarah.shirley@banking.state.tx.us.

The proposed amendments implement Finance Code, §154.051(b)(2) and (3), which authorize the commission to adopt reasonable rules regarding the keeping and inspection of records relating to the sale of prepaid funeral benefits and the filing of contracts and reports.

Finance Code, Chapter 154, is affected by the proposed amendments.

§25.10. <u>Recordkeeping</u> [~~Record Keeping~~] Requirements for Insurance-Funded Contracts .

(a) Application. This section applies to a permit holder who sells or maintains insurance-funded prepaid funeral benefit contracts. Unless the Department of Banking (the department) is petitioned for and agrees to a different location under subsection (i) of this section, all specified records must be made available to the department [~~for examination~~] at the physical location in Texas that the permit holder has

designated in written notice to the department on file at the time of the examination, and be made available at the beginning of the examination.

(b) General files. A permit holder subject to this section must maintain general files regarding its prepaid funeral benefits operations. The [~~Such~~] files may be maintained in hard-copy form or on microfiche or in an electronic database from which they can [~~may~~] be expeditiously retrieved in hard-copy form. The [~~These~~] files must contain the original or a copy of the following:

(1) the latest Permit Renewal and Annual Report filed with the department and the reconcilements supporting reported policy activity [~~approved renewal permit application for the permit holder and its last filed annual report~~];

(2) (No change.)

(3) each prepaid contract form approved for sales transacted within the last three years unless no outstanding contracts exist using such form;

(4) (No change.)

(5) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, the most current consolidated financial statement [~~, or the most recent annual statement~~] filed with the insurance regulatory agency of the insurance company's state of domicile [~~each state in which the permit holder is required to file or, if not available, of the parent corporation~~];

(6) (No change.)

(7) all department examination reports [~~made by the department~~] within the last three years, the examination report acknowledgments executed by the permit holder's board of directors, the permit holder's responses to and other correspondence with the department regarding the examinations, and any correspondence, notice, order or other documentation relating to the initiation or prosecution by the department of an administrative proceeding against the permit holder;

(8) all Texas Department of Insurance (TDI) approved insurance policies used in conjunction with the sale of prepaid funeral contracts or the conversion of trust-funded contracts within [~~for~~] the last three years and all insurance policies used for such purposes that are funding new contracts or contracts that are outstanding, and all TDI letters approving such policies for use in funding new prepaid contracts or converting trust-funded prepaid contracts in Texas to insurance-funding;

(9) a list of insurance conversions performed within [~~for~~] the last three years, a copy of the [~~each~~] order [~~Order~~] approving each [~~such~~] conversion, and a copy of the final post-conversion summary provided to the department for each conversion;

(10) all correspondence with the department for the last three years, including recordkeeping exceptions and other department or commissioner approvals or directions;

(11) if the permit holder is an insurance company or an entity that controls or is controlled by an insurance company, a copy of the [~~all state insurance regulatory agency~~] examination reports of the insurance regulatory agency of the insurance company's state of domicile for the last three years, and any responses to the regulatory agency regarding examination report findings that are pertinent to the prepaid funeral benefit business, unless the law of the state of domicile prohibits disclosure of the examination reports and related correspondence to the department; [~~and~~]

(12) [~~for any contract written in the last three years that does not specify whether a casket or outer-burial container is either sealer/non-sealer or protective/non-protective, then~~] if the permit holder has an outstanding contract with a funeral provider that has an issue date within the last three years, either:

(A) general [~~price lists for the corresponding or contracted funeral provider;~~]

[~~(B)~~] casket, [~~and~~] outer burial container, and urn price lists for the corresponding or contracted funeral provider; or

[~~(C)~~] (B) alternative documentation that [~~will~~] demonstrates [~~demonstrate~~] compliance with required casket, [~~and~~] outer-burial container and urn merchandise descriptions; [~~.~~] and

(13) for all death maturities dated within the last three years, price lists used by the contracted funeral providers at the time of the death maturity processing.

(c) Individual files.

(1) A [~~Each~~] permit holder subject to this section must [~~shall~~] maintain a prepaid funeral benefits contract file on each purchaser. The [~~These~~] files must be either maintained separately or capable of retrieval separately for outstanding contracts and non-forfeiture and out-of-force policies [~~(including reduced paid-up policy contracts), matured contracts, and canceled contracts~~]. Files may be maintained either chronologically or alphabetically in hard-copy form or on microfiche or in an electronic database from which they may be expeditiously retrieved in hard-copy form. Each [~~individual~~] file must [~~should~~] contain all correspondence pertaining to the contract for that file including documentation to evidence that the executed preneed contract has been issued to the contract purchaser and the funding policy has been issued to the contract purchaser or policy owner within 30 days of the receipt of the initial down payment and insurance application.

(2) Each file pertaining to an outstanding contract must contain a copy of the prepaid [~~funeral benefits~~] contract, any [~~revocable and~~] irrevocable assignments, and the data face sheet of the insurance policy or annuity contract funding the contract.

(3) Each file pertaining to a matured contract must be retained for three years. Each [~~such~~] file must contain copies of all documents required for an outstanding prepaid contract and a fully completed department withdrawal form, [~~or~~] evidence of department withdrawal approval, or a proof of claim form prepared and completed by the permit holder which contains all the required information included on the department's prescribed withdrawal form. In addition:

(A) a matured-contract file for which services were provided by the contracted funeral provider, a funeral provider related by common ownership to the contracted funeral provider, or under an executed [~~a~~] successor provider assignment accepted by all contracting parties must contain:

(i) the original or a final copy of the completed at-need contract or funeral purchase agreement, the cemetery interment order if the prepaid contract relates only to a grave opening and closing fee, outer-burial container or other related merchandise and services, or an itemization of services performed and merchandise delivered; the document must be [~~transferred~~] signed by the decedent's personal representative and indicate the [~~; or, if the preneed funeral contract relates only to the opening and closing of a grave, the cemetery interment order and/or other documents signed by the decedent's representative, provided the interment order or other documents must denote the~~] prepaid credits and any discounts applied, resulting in the balance due from the family, if any, to substantiate the charges pertinent to any prepaid funeral goods or services [~~that was due on the preneed contract at the time of death and any preneed discount~~];

(ii) a [~~certified death certificate or a~~] copy of a certified [~~original~~] death certificate;

(iii) (No change.)

(iv) evidence of payment of the policy(s) death benefits to the servicing funeral provider, e.g., a copy of payment check or check stub; and

(v) documentation of premium payment history which reflects any balance owing on the funding policy(s), and the [~~and death~~] benefitsavailable at the time of claim; and [~~paid.~~]

(vi) if applicable, evidence of payment to the decedent's personal representative of any refund of contract overcharges by the provider.

(B) a matured contract file for which services were provided by a person other than those listed in subparagraph (A) of this paragraph must contain:

(i) - (ii) (No change.)

(iii) a copy of a certified death certificate [~~or a copy of a certified original death certificate~~]; and

(iv) documentation of premium payment history which reflects any balance owing on the funding policy(s) for annuity contracts and the death benefits [~~paid~~] available at the time of claim.

(4) Each file pertaining to a canceled contract must be retained at a minimum for the period since the last examination [~~for three years~~]. Each [~~such~~] file must contain copies of all documents required for an outstanding contract, a completed departmental withdrawal form or evidence of departmental withdrawal approval, documentation of premium payment history to support available cash surrender value, and evidence of payment of cancellation benefit, e.g., a copy of payment check or check stub.

(5) Each file pertaining to a reduced paid-up or extended term insurance policy must be retained for three years[~~. Each reduced paid-up policy file must~~] and contain copies of all documents required for an outstanding contract and a copy of the permit holder's letter to the purchaser informing the purchaser of contract status. The letter must state the date of the status change and, if applicable, the reduced death benefit coverage amount or the termination date of such coverage. Each reduced paid-up or extended term policy file must also include copies of an election form indicating the purchaser has chosen reduced paid-up or extended term status, unless the policy has automatic non-forfeiture [~~reduced paid-up~~] provisions.

(d) (No change.)

(e) Records [~~Consolidated records~~]. A [~~Each~~] permit holder subject to this section must [~~shall~~] maintain the following records regarding its prepaid funeral benefits operations for both new and conversion sales, either in hard copy or stored on microfiche or in an electronic database from which they may be expeditiously retrieved and printed for review:

(1) a [~~an~~] historical contract register maintained chronologically or by policy number or by contract number reflecting all prepaid funeral contracts and policies, and a notation of the status of the contracts and policies as outstanding, matured, canceled, or reduced paid-up. Contracts may be removed from the register when three years or more has elapsed from the date of final disposition. The contract register should be formatted in columns with the following headings and provide the corresponding information [~~contain columns indicating~~]:

(A) - (D) (No change.)

(E) the prepaid [~~face amount of the~~] contract total; and

(F) (No change.)

(2) payment-receipt records which detail individual payment receipt records to document the date of initial collection from the contract purchaser by the permit holder or its agent [~~histories indicating payments collected~~];

(3) an in-force policy register maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number, balanced at least quarterly [~~each calendar year-end and at the close of each department examination period~~] to the individual files and insurance company records relating to the active prepaid [~~preneed~~] contracts. The in-force registers must [~~reconciliations should~~] be retained in hard-copy form or on microfiche or in an electronic database from which they may be expeditiously retrieved in hard-copy form for review by the examiner for a period of three years. The in-force register must accumulate to grand totals for all policies with respect to the information required under subparagraphs (C), (E), (F), and (G) of this paragraph. [~~and contain the following information for each policy or contract at a minimum~~] Additionally, the in-force register must be formatted in columns with the following headings and provide the corresponding information:

(A) - (B) (No change.)

(C) the [~~face amount of~~] prepaid [~~funeral~~] contract total;

(D) (No change.)

(E) the current death benefit payable [~~, or insurance in force, whichever is applicable~~];

(F) - (G) (No change.)

(4) reports detailing out-of-force and non-forfeiture policies [~~policy reports~~] sub-totaled in count and reduced coverage amount, [~~identified~~] by status codes for death maturity, canceled, surrendered, lapsed, reduced paid-up, extended term, voided, not taken, or such other codes which may be used to designate policies no longer in force, maintained either chronologically by date of policy issuance, alphabetically by the insured's name, or serially by policy number. If the reports cannot be sub-totaled, separate reports must be generated for each type of termination status or non-forfeiture change. The [~~This~~] report must be prepared quarterly and tie to the permit holder's quarterly reconcilements of policy activity [~~at each calendar year-end and at the close of each department examination period~~]. Each report [~~of these reports~~]] must be retained for a period of three years. The reports required under this subsection must be formatted in columns with the following headings and provide the corresponding information [~~and contain at a minimum~~]:

(A) - (D) (No change.)

(E) the amount of in-force death benefit coverage [~~or face value of insurance~~] that has been [~~paid,~~] reduced off the in-force policy register for reconcilement purposes for all terminations and non-forfeiture policy changes [~~, deleted, or transferred.~~] ; and

(F) the amount of funds paid out on death claims, cancellations, surrenders, and any other type of claim that resulted in funds being disbursed by the permit holder. Reduced paid-up, lapsed and extended term insurance policies should reflect zero for amounts paid out, because the policy may remain in force but is no longer required to be reconciled as an active prepaid policy.

[~~(5) individual policy ledgers for each contract purchaser, balanced at least each calendar year-end and at the close of each department examination period to the in-force policy register and to the records of the insurance depository. These ledgers should be retained in hard-copy form, or on microfiche or in an electronic database from~~

which they may be expeditiously retrieved in hard-copy form, for review by the examiner for a period of three years, and should reflect:]

[(A) the insured's name;]

[(B) the date of policy issuance;]

[(C) the policy number(s);]

[(D) the contract amount;]

[(E) the policy face amount;]

[(F) the premium amount;]

[(G) the premiums collected to date for annuity policies only;]

[(H) the death benefit, or insurance in force, whichever is applicable; and]

[(I) cumulative growth, e.g., dividends and interest, attributable to policies.]

(f) Conversions. A permit holder subject to this section shall maintain a file copy of the original trust-funded prepaid funeral contracts that have been converted to insurance funding, a copy of the conversion order and related final post-enhancement schedules, and the payment history records for each converted contract prior to conversion.

(g) Corporate records.

(1) Corporate records of a permit holder subject to this section pertaining to actual or anticipated regulatory action or litigation that could result in the permit holder's insolvency and all corporate minutes must be maintained and made available to the department at each examination.

(2) If required records are maintained electronically, the permit holder must provide evidence of a disaster recovery plan and offsite data storage capabilities regarding all records and documentation related to prepaid contracts.

(h) Exceptions.

(1) (No change.)

(2) With respect to contracts sold prior to the effective date of this section, a permit holder will not violate this section if it cannot produce records required under this section which were not previously required by statute or rule. However, basic reporting of in-force benefit amounts and policy activity from the last examination date to the current examination date will be required of all permit holders for insurance companies that have outstanding insurance policies funding prepaid [preneed] funeral contracts in Texas.

(3) A permit holder may apply to the commissioner [Commissioner] for an exception to the recordkeeping [record keeping] requirements of this section, including the requirements of subsections (e)(3) and (4) that records be maintained and reconciled quarterly [as provided under this subsection]. An exception may be granted or revoked for good cause only by prior written direction [approval] of the Commissioner.

(i) Relocation of records. Prior to changing the location where required records are maintained or where the examination is to be performed pursuant to Section 154.053(a) of the Texas Finance Code, a permit holder must notify the department, specifying the new address in writing, and, if the change in location requires the granting of an exception, comply with subsection (h)(3) of this section before required records are moved to the new location. The commissioner may revoke a records location approval if the commissioner determines that such action is necessary to effectively regulate the permit holder and examine the records and policies.

(j) Maintenance of files. Documents and records required to be maintained under this section must be filed within 30 days of receipt. Cash and other forms of payments received must be posted within 30 days of receipt, and cash withdrawn on death maturities [maturity] must be posted within 30 days of actual withdrawal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606765
Sarah J. Shirley
General Counsel
Texas Department of Banking
Proposed date of adoption: February 23, 2007
For further information, please call: (512) 475-1300

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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 84. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER B. INSTALLMENT SALES CONTRACT PROVISIONS

7 TAC §84.209, §84.210

The Finance Commission of Texas (commission) proposes amendments to §84.209, concerning Model Clauses, and §84.210, concerning Permissible Changes.

The purpose of the amendments to both §84.209 and §84.210 is to update the amount of dealer retainage on the safety inspection fee as contained in the model clauses and model contract for Chapter 348 transactions. Section 548.501 of the Texas Transportation Code lists the fee for inspection of a motor vehicle at $12.50, and an inspection station must pay $5.50 of each safety inspection fee to the Texas Department of Transportation (TxDOT). Thus, the dealer retainage has been updated to reflect an amount of $7.00 ($12.50 total safety inspection fee minus $5.50 paid to TxDOT equals $7.00 dealer retainage). The correction is being proposed in the following figures: Figure: 7 TAC §84.209(8)(A), Figure: 7 TAC §84.209(8)(B), and Figure: 7 TAC §84.210(b). Please note that the text of the rules contained in §84.209 and §84.210 is not being changed, as only the listed figures were in need of this update.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to §84.209 and §84.210 are in effect, there will be no fiscal implications for state or local government as a result of administering the rules.

For each year of the first five years the amendments to §84.209 and §84.210 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will reflect current statutory provisions and will be more easily understood.

There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §348.513 grants the commission the authority to adopt rules to enforce the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

§84.209. Model Clauses.

The following model clauses provide the plain language equivalent of provisions found in contracts subject to Texas Finance Code, Chapter 348.

(1) - (7) (No change.)

(8) Itemization of amount financed. The creditor drafting the contract is given considerable flexibility regarding the itemization of amount financed disclosure so long as the itemization of amount financed disclosure complies with the Truth in Lending Act. As an example, a creditor may disclose the manufacturer's rebate either as: a component of the downpayment; or a deduction from the cash price of the motor vehicle. The model contract provision for the itemization of the amount financed discloses the manufacturer's rebate as a component of the downpayment. If the creditor elected to disclose the manufacturer's rebate as a deduction from the cash price of the motor vehicle, the cash price component of the itemization of amount financed would be amended to reflect the dollar amount of the manufacturer's rebate being deducted from the cash price of the motor vehicle.

(A) The model clause regarding itemization of amount financed-sales tax advance reads:
Figure: 7 TAC §84.209(8)(A)

(B) The model clause regarding itemization of amount financed-sales tax deferred reads:
Figure: 7 TAC §84.209(8)(B)

(9) - (43) (No change.)

§84.210. Permissible Changes.

(a) (No change.)

(b) A sample model motor vehicle retail installment contract is presented in the following example.
Figure: 7 TAC §84.210(b)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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For further information, please call: (512) 936-7640

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CHAPTER 85. RULES OF OPERATION FOR PAWNSHOPS

SUBCHAPTER B. PAWNSHOP LICENSE

7 TAC §85.203

The Finance Commission of Texas (commission) proposes amendments to §85.203, concerning Relocation.

The purpose of the amendments to §85.203 is to add language which had been inadvertently omitted concerning relocation requirements in counties with a population of 250,000 or more.

Section 85.203 was amended as part of a standard rule review during 2005. The amendments went into effect on September 19, 2005. However, the paragraphs and subparagraphs under subsection (f) concerning relocation requirements were inadvertently omitted when §85.203 was amended. The agency never intended to discontinue these requirements, as it implements Texas Finance Code, §371.059, currently in effect and, in fact, had specifically listed that subsection (f) was to have "No change," as stated in the proposal published in the *Texas Register* on July 1, 2005 (30 TexReg 3786). That proposal was subsequently adopted without changes by the commission and was published in the *Texas Register* on September 2, 2005 (30 TexReg 5335). With these proposed amendments, the agency is now returning the omitted language to its original location within the rule.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the amendments to §85.203 are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to §85.203 are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the section as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the

date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to propose rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §371.006 authorizes the commission to adopt rules for the enforcement of the Texas Pawnshop Act (Chapter 371).

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 371.

§85.203. Relocation.

(a) - (e) (No change.)

(f) Relocation distances. Distances shall be measured in a direct line despite travel patterns and natural or manmade obstacles, and shall be measured from front door to front door. The commissioner may require a survey to determine distances from the proposed pawnshop location to existing operating pawnshops. In examining the distance requirements of a proposed pawnshop, the existence or location of an inactive license will not be considered in the determination of the distance requirements. An application for relocation may not be approved unless the eligibility requirements are met.

(1) If the proposed facility is within a county with a population of less than 250,000 according to the most recent decennial census, there is no distance requirement from another operating pawnshop;

(2) If the proposed facility is within a county with a population of 250,000 or more according to the most recent decennial census and:

(A) if the pawnshop was licensed and was not operating, it may locate not less than one mile from an operating pawnshop;

(B) if the pawnshop has been operating continuously at its current location for at least three years, it may locate within one mile of its current location regardless of distance from another operating pawnshop;

(C) if the pawnshop has been in operation, it may locate not less than one mile from an operating pawnshop.

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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CHAPTER 90. CHAPTER 342, PLAIN LANGUAGE CONTRACT PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §90.105

The Finance Commission of Texas (commission) proposes amendments to §90.105, concerning Complaints and Inquiries Notice.

The purpose of the amendments to this rule governing plain language contract provisions for Chapter 342 transactions is to make technical corrections discovered by the agency as well as an industry representative upon the relocation and readoption of this rule in new Chapter 90.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the amendments to this rule is in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to this rule are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more accurate and will be more easily understood There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapters A - F, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until October 1, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of Chapter 90 in the *Texas Register* on August 25, 2006, (31 TexReg 6671) listed the date of September 15, 2007; however, the agency intends to provide licensees until October 1, 2007, for compliance.

The amendments are proposed under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.105. Complaints and Inquiries Notice.

(a) (No change.)

(b) Required notice.

(1) The following notice must be given to let consumers know how to file complaints: "The (your name) is [{]licensed and examined [~~or registered~~)] under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (your name) should contact the Office of Consumer Credit Commissioner through one of the means indicated below: In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207. Telephone No.: (800) 538-1579. Fax No.: (512) 936-7610. E-mail: consumer.complaints@occc.state.tx.us. Website: www.occc.state.tx.us."

(2) - (4) (No change.)

(5) In addition to the notice required to be included on each privacy notice, a notice is also required on each contract of a licensed lender pursuant to Texas Finance Code, §14.104.

(A) (No change.)

(B) A lender may use the following notice: "This lender is licensed and examined by the State of Texas - Office of Consumer Credit Commissioner Call the Consumer Credit Hotline or write for credit information or assistance with credit problems. Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, (800) 538-1579,[.] www.occc.state.tx.us."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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SUBCHAPTER D. SECOND LIEN HOME EQUITY LOANS (SUBCHAPTER G)

7 TAC §90.403, §90.404

The Finance Commission of Texas (commission) proposes amendments to §90.403, concerning Model Clauses and §90.404, concerning Permissible Changes for second lien home equity loans.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to make technical corrections and one substantive change discovered by the agency as well as an industry representative upon the relocation and readoption of these rules in new Chapter 90. Aside from the proposed revisions regarding the Notice of Confidentiality Rights explained below, the proposed amendments correctly label the proper methods available to calculate late charges, return inadvertently omitted language, match model clauses with the language contained in the model forms for consistency purposes, and correct punctuation and other technical errors.

In reference to the Notice of Confidentiality Rights, proposed amendments concerning this notice are contained in §90.403(c)(37). As per Texas Property Code, §11.008, this notice is only required if the security document actually includes or discloses the borrower's social security number (SSN) or driver's license number. Thus, all of the model clauses have proposed corrections addressing the fact that this notice is not mandatory, except when the borrower's SSN or driver's license number is actually included; and that if required, it should be listed at the top of the first page. However, it is the agency's understanding that the widespread current industry practice is to not include such information on security documents. Thus, the Notice of Confidentiality Rights itself is proposed for deletion from the model forms, as it is not a required or mandatory clause for every security agreement, but rather is a permissible addition and should be added by the lender when triggered by the lender's disclosure of the borrower's personal information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that, for the first five-year period the amendments to these rules are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more accurate and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by e-mail to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapters A - F, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC Part 1, Chapter 1, Subchapter Q) is acceptable; and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until October 1, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of Chapter 90 in the *Texas Register* on August 25, 2006, (31 TexReg 6680) listed the date of September 15, 2007; however, the agency intends to provide licensees until October 1, 2007, for compliance.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.403. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien home equity loan contract:

(1) - (4) (No change.)

(5) Late charge. [~~Licensees using contracts using the true daily earnings method are not permitted to assess a late charge.~~] The model late charge provision for contracts using the scheduled installments earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) - (18) (No change.)

(19) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any [~~the~~] law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) - (25) (No change.)

(c) For the security document for a Chapter 342, Subchapter G second lien home equity loan contract:

(1) - (36) (No change.)

(37) Notice of confidentiality rights disclosure. On or after January 1, 2004, if the security document includes the borrower's social security number or driver's license number, it must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) - (C) (No change.)

§90.404. Permissible Changes.

(a) A licensed lender may consider making the following types of changes to the second lien home equity loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.404(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.404(a)(8)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606753

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-7640

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SUBCHAPTER E. SECOND LIEN PURCHASE MONEY LOANS (SUBCHAPTER G)

7 TAC §90.503, §90.504

The Finance Commission of Texas (commission) proposes amendments to §90.503, concerning Model Clauses and §90.504, concerning Permissible Changes for second lien purchase money loans.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to make technical corrections and one substantive change discovered by the agency as well as an industry representative upon the relocation and readoption of these rules in new Chapter 90. Aside from the proposed revisions regarding the Notice of Confidentiality Rights explained below, the proposed amendments correctly label the proper methods available to calculate late charges, return inadvertently omitted language, match model clauses with the language contained in the model forms for consistency purposes, and correct punctuation and other technical errors.

In reference to the Notice of Confidentiality Rights, proposed amendments concerning this notice are contained in §90.503(c)(35). As per Texas Property Code, §11.008, this notice is only required if the security document actually includes or discloses the borrower's social security number (SSN) or driver's license number. Thus, all of the model clauses have proposed corrections addressing the fact that this notice is not mandatory, except when the borrower's SSN or driver's license number is actually included, and that if required, it should be listed at the top of the first page. However, it is the agency's understanding that the widespread current industry practice is to not include such information on security documents. Thus, the Notice of Confidentiality Rights itself is proposed for deletion from the model forms, as it is not a required or mandatory clause for every security agreement, but rather is a permissible addition and should be added by the lender when triggered by the lender's disclosure of the borrower's personal information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more accurate and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar

Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapters A - F, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until October 1, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of Chapter 90 in the *Texas Register* on August 25, 2006, (31 TexReg 6687) listed the date of September 15, 2007; however, the agency intends to provide licensees until October 1, 2007, for compliance.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.503. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) - (4) (No change.)

(5) Late charge. [~~Licensees using contracts using the true daily earnings method are not permitted to assess a late charge.~~] The model late charge provision for contracts using the scheduled installment earnings method or the true daily earnings method reads: "If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment."

(6) - (18) (No change.)

(19) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any [~~the~~] law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(20) - (25) (No change.)

(c) For the security document for a Chapter 342, Subchapter G second lien purchase money loan contract:

(1) - (5) (No change.)

(6) Funds for escrow items. The model provision regarding the funds for escrow items reads:
Figure: 7 TAC §90.503(c)(6)

(7) - (13) (No change.)

(14) Extension of credit charges. The model provision for the extension of credit charges reads:
Figure: 7 TAC §90.503(c)(14)

(15) - (34) (No change.)

(35) Notice of confidentiality rights disclosure. On or after January 1, 2004, if the security document includes the borrower's social security number or driver's license number, it must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) - (C) (No change.)

§90.504. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien purchase money loans plain language model clauses:

(1) - (6) (No change.)

(7) A sample model note is presented in the following example.
Figure: 7 TAC §90.504(a)(7)

(8) A sample model security document is presented in the following example.
Figure: 7 TAC §90.504(a)(8)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606754
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-7640

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SUBCHAPTER F. SECOND LIEN HOME IMPROVEMENT CONTRACTS (SUBCHAPTER G)

7 TAC §90.603, §90.604

The Finance Commission of Texas (commission) proposes amendments to §90.603, concerning Model Clauses and §90.604, concerning Permissible Changes for second lien home improvement contracts.

The purpose of the amendments to these rules governing plain language contract provisions for Chapter 342 transactions is to make technical corrections and one substantive change discovered by the agency as well as an industry representative upon the relocation and readoption of these rules in new Chapter 90. Aside from the proposed revisions regarding the Notice of Confidentiality Rights explained below, the proposed amendments

correctly label the proper methods available to calculate late charges, return inadvertently omitted language, match model clauses with the language contained in the model forms for consistency purposes, and correct punctuation and other technical errors.

In reference to the Notice of Confidentiality Rights, proposed amendments concerning this notice are contained in §90.603(b)(15), and §90.603(f)(35). As per Texas Property Code, §11.008, this notice is only required if the security document actually includes or discloses the borrower's social security number (SSN) or driver's license number. Thus, all of the model clauses have proposed corrections addressing the fact that this notice is not mandatory, except when the borrower's SSN or driver's license number is actually included, and that if required, it should be listed at the top of the first page. However, it is the agency's understanding that the widespread current industry practice is to not include such information on security documents. Thus, the Notice of Confidentiality Rights itself is proposed for deletion from the model forms, as it is not a required or mandatory clause for every security agreement, but rather is a permissible addition and should be added by the lender when triggered by the lender's disclosure of the borrower's personal information.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments to these rules are in effect, there will be no fiscal implications for state or local government as a result of administering the amendments.

For each year of the first five years the amendments to these rules are in effect, Commissioner Pettijohn has also determined that the public benefit anticipated as a result of the proposed amendments will be that the commission's rules will be more accurate and will be more easily understood. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the amendments as proposed.

These amendments as well as all of the rules contained in recently adopted Chapter 90 provide model clauses and model contracts. Licensees are not required to adopt the model language contained in the rules. However, regarding Chapter 90, Subchapters A - F, for those licensees utilizing the model contracts, the prior model language (as contained in former 7 TAC, Part 1, Chapter 1, Subchapter Q) is acceptable and the agency will permit licensees to use the prior model language (without a non-standard contract submission) until October 1, 2007, to deplete supplies of existing forms during a transition period after the effective date of the rules. Please note that the publication of the adoption of Chapter 90 in the *Texas Register* on August 25, 2006, (31 TexReg 6694) listed the date of September 15, 2007; however, the agency intends to provide licensees until October 1, 2007, for compliance.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loans chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 342.

§90.603. Model Clauses.

(a) (No change.)

(b) For a Chapter 342, Subchapter G second lien home improvement loan contract for use in a transaction that does not allow for withdrawals or multiple advances:

(1) - (14) (No change.)

(15) Notice of confidentiality rights disclosure. On or after January 1, 2004, if the security document includes the borrower's social security number or driver's license number, it must incorporate a "Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) - (C) (No change.)

(c) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that does not allow for withdrawals or multiple advances:

(1) - (22) (No change.)

(23) Savings clause. The savings model clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this loan agreement is declared invalid, the rest of the loan agreement remains valid. If any part of this loan agreement conflicts with any law, that law will control. The part of the loan agreement that conflicts with any [~~the~~] law will be modified to comply with the law. The rest of the loan agreement remains valid."

(24) - (29) (No change.)

(d) (No change.)

(e) For a Chapter 342, Subchapter G second lien home improvement loan promissory note for use in a transaction that allows for withdrawals or multiple advances:

(1) - (22) (No change.)

(23) Savings clause. The model savings clause stating that if any part of the contract is invalid, the rest remains valid reads: "If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any [~~the~~] law will be modified to comply with the law. The rest of the Loan Agreement remains valid."

(24) - (30) (No change.)

(f) For a Chapter 342, Subchapter G second lien home improvement loan deed of trust for use in a transaction that allows for withdrawals or multiple advances:

(1) - (34) (No change.)

(35) Notice of confidentiality rights disclosure. On or after January 1, 2004, if the security document includes the borrower's social security number or driver's license number, it must incorporate a

"Notice of Confidentiality Rights" disclosure. The disclosure or notice must:

(A) appear on the top of the first page of the security document;

(B) - (C) (No change.)

§90.604. Permissible Changes.

(a) A licensee may consider making the following types of changes to the second lien home improvement contracts plain language model clauses:

(1) - (11) (No change.)

(12) A sample model contract that does not allow for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(12)

(13) - (14) (No change.)

(15) A sample model promissory note that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(15)

(16) A sample model deed of trust that allows for withdrawals or multiple advances is presented in the following example. Figure: 7 TAC §90.604(a)(16)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606755
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-7640

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes an amendment to §26.73, relating to Financial and Operating Reports, and the repeal of §26.77, relating to Payments, Compensation, and Other Expenditures; §26.84, relating to Annual Reporting of Affiliate Transactions of DCTUs; and §26.98, relating to Cost Allocation Manual. The 79th Legislature, Senate Bill 408 (SB 408), Section 13, required the commission to perform a comprehensive review of reporting requirements, whether required by statute or commission rules, relating to telecommunications providers. The commission's evaluation, performed in Project Number 32460, pursuant to SB 408, concluded that numerous reporting requirements contained in the sections proposed for repeal and the section proposed for amendment were duplicative, no longer necessary, or required additional review. Project Number 33401 has been assigned to this proceeding.

Ms. Janis Ervin, Senior Policy Specialist, Infrastructure Reliability Division, and Ms. Angie Welborn, Attorney, Legal Division, have determined that, for each year of the first five-year period the proposal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering these sections.

Ms. Ervin and Ms. Welborn have determined that, for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the amended section will be the consolidation and clarification of the reporting requirement and procedures relating to the annual earnings report and that the repeal of reporting requirements in the three proposed repealed sections will result in efficiency and cost savings for the telecommunications providers and the commission. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this proposal. There is no anticipated economic cost to persons who are required to comply with the proposal.

Ms. Ervin and Ms. Welborn have also determined that, for each year of the first five years the proposal is in effect, there should be no effect on a local economy and, therefore, no local employment impact statement is required under Administrative Procedure Act, §2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Texas Government Code, §2001.029, or deemed necessary by commission staff, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, February 28, 2007 at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed sections (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Reply comments may be submitted within 45 days after publication. Parties are also requested to e-mail an electronic copy of comments to janis.ervin@puc.state.tx.us, if possible. The commission invites specific comments regarding any costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to repeal and adopt the proposed sections. All comments should refer to Project Number 33401 and should be organized in sequence by the applicable sections and subsections.

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §26.73

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and ,specifically, pursuant to the general requirements of SB 408 regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13.

§26.73. Annual Earnings Report [~~Financial and Operating Reports~~].

[~~(a) Annual reports.~~]

[~~(1) Each Class A and B public utility, as classified in §26.72(b), shall file with the commission the same annual report as is required of such utility by the Federal Communications Commission or United States Department of Agriculture - Rural Utilities Service. Such annual reports shall be filed on the same dates as required to be filed by the Federal Communications Commission or the United States Department of Agriculture-Rural Utilities Service, whichever is applicable.~~]

[~~(2) Each utility holding company subject to annual reporting to the Securities and Exchange Commission and each utility shall file with the commission three copies of its annual report to shareholders, customers, or members. Unless included in the annual report to shareholders, customers, or members, each utility shall file concurrently with the filing of such report three copies of any audited financial statements that may have been prepared on its behalf.~~]

[~~(b)~~] [~~Annual earnings report.~~] Each utility shall file with the commission, on commission-prescribed forms available on the commission's website, [~~commission prescribed forms,~~] an earnings report providing the information required to enable the commission to properly monitor public utilities within the state.

(1) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(2) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than May 15th of each year [~~the date prescribed in §26.71(f)(4) of this title (relating to General Procedures, Requirements, and Penalties)~~].

(3) A [~~On the due date of the annual earnings report, each~~] utility with a rate proceeding pending before the commission on the due date of the annual earnings report, pursuant to the Public Utility Regulatory Act, Chapter 53, in which a rate filing package is required, or who had a final order issued in such a proceeding within the previous 12 months, is exempt from filing the report [~~may submit an abbreviated earnings report. Specifications for the abbreviated filing are included in the General Filing Instructions for the annual earnings report~~].

[~~(4) Each dominant certificated telecommunications utility shall submit annually an access line report as part of its annual earnings report.~~]

[~~(c) Securities and Exchange Commission reports. Each utility and utility holding company subject to reporting requirements of the Securities and Exchange Commission shall file three copies of each required report with the commission. Three copies of each such report including 10--Ks, 10--Qs, 8--Ks, Annual Reports, and Registration Statements filed with the Securities and Exchange Commission shall be submitted to the commission no later than 15 days from the initial filing date with the Securities and Exchange Commission.~~]

[~~(d) Duplicate information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606772
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-7223

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16 TAC §§26.77, 26.84, 26.98

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

These repeals are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998, Supplement 2006) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and, specifically, pursuant to the general requirements of SB 408 regarding the commission's ability to act upon those conclusions that do not require statutory review.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and SB 408, Section 13.

§26.77. Payments, Compensation, and Other Expenditures.

§26.84. Annual Reporting of Affiliate Transactions of DCTUs.

§26.98. Cost Allocation Manual.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606771
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 70. INDUSTRIALIZED HOUSING AND BUILDINGS

16 TAC §70.60

The Texas Department of Licensing and Regulation ("Department") proposes amendments to an existing rule at 16 Texas Administrative Code, §70.60 regarding industrialized housing and buildings. The proposed amendments would give the Department needed flexibility to make greater use of third parties in certification inspections of manufacturing facilities. Under the current rule and Department procedures, a Department team conducts the certification inspection. The team may include third

party inspectors, but a Department employee is required to lead the team. Due to the volume of manufacturers applying to market industrialized housing and buildings in Texas and the Department's limited resources, the Department, the industry, and the public would benefit from having some certification inspections performed entirely by qualified third parties. This would assist the Department in completing certification inspections in a timely manner, while maintaining public safety.

The amendments to subsection (a) make clear that the Department may designate a certification team that does not include a Department employee. The team leader must be a Department employee, an engineer, or other qualified person as determined by procedures established by the Texas Industrialized Building Code Council. The rule states that the team may not include personnel of the third party inspection agency responsible for the regular in-plant inspections of the manufacturer. Existing language is reorganized into a new subsection (b).

The amendments use the term "certification team" throughout the rule for consistency.

The amendment to subsection (e), formerly subsection (d), clarifies that the Department is responsible for determining whether the manufacturer is capable of meeting the certification requirements.

New subsection (f) provides that if any personnel of a design review agency or third party inspection agency participate as members of a certification team, the agency is responsible for complying with the industrialized housing and building law, Commission rules, and decisions, actions, and interpretations of the Industrialized Building Code Council. This new provision is necessary because the Department anticipates that individuals who are qualified to serve as team leaders will not necessarily be registered, as individuals, with the Department and so may not be directly subject to Department regulation. The rule makes design review agencies and third party inspection agencies, which are registered with and regulated by the Department, responsible for the actions of their personnel in performing certification inspections.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no significant change in costs or revenue to the Department from implementing and enforcing the rules. There will be no fiscal implications to local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be increased efficiency in the approval process for industrialized housing and building manufacturers, without compromising public safety.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, there will be no economic costs to persons required to comply with the amended rule and no adverse economic impact to small or micro-businesses.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement that chapter and any other law establishing a program regulated by the Department, and Texas Occupations Code, Chapter 1202. In particular, §1202.101(a) directs the Commission to adopt rules as necessary to ensure compliance with the purposes of Chapter 1202 and provide for uniform enforcement of Chapter 1202.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 1202. No other statutes, articles, or codes are affected by the proposal.

§70.60. Responsibilities of the Department--Plant Certification.

(a) Prior to being issued decals or insignia, each manufacturing facility will undergo a certification inspection. The plant certification inspection will be conducted by a certification [~~department~~] team designated by the department. The team may not include personnel of the third party inspection agency responsible for regular in-plant inspections of the manufacturer. The team shall consist [~~normally consisting~~] of :

(1) a team leader, who is either a department employee, an engineer, or other qualified person as determined by procedures established by the Texas Industrialized Building Code Council; and

(2) one or more department inspectors or [~~when designated by the department~~] third party inspectors.

(b) The inspection shall be conducted in accordance with the procedures established by the Texas Industrialized Building Code Council. A certification inspection has two primary purposes:

(1) to verify that the manufacturer is capable of producing modules or modular components that comply with the law and the rules, mandatory building codes, and approved design package; and

(2) to verify that the manufacturer's approved compliance control program will ensure compliance now and in the future.

(c) [~~(b)~~] The team will become familiar with all aspects of the manufacturer's approved design package. Structures on the production line will be checked to assure that failures to conform located by the certification [~~inspection~~] team are being located by the plant compliance control program and are being corrected by the plant personnel. The certification [~~inspection~~] team will work closely with the plant compliance control personnel to assure that the approved design package and compliance control manuals for the facility are clearly understood and followed. If deemed necessary by the certification [~~inspection~~] team, a representative of the design review agency must be present during the inspection. At least one module or modular component containing all systems, or a combination of modules or modular components containing all systems, shall be observed during all phases of construction. The team must inspect all modules or modular components in the production line for Texas during the certification. The plant certification inspection will terminate when the certification [~~inspection~~] team has fully evaluated all aspects of the manufacturing facility.

(d) [~~(c)~~] The certification team will issue a plant certification, or facility evaluation, report to the manufacturer when the department has determined that the manufacturer has met the requirements for certification. A copy of the plant certification report will also be forwarded to the third party inspection agency responsible for in-plant inspections. The manufacturer and third party inspection agency will be responsible for ensuring that all conditions of certification as outlined in the certification report are met. The manufacturer must keep a copy of this report in their permanent records. The report will contain, at a minimum, the following information:

(1) the name and address of the manufacturer;

(2) the names and titles of personnel performing the certification inspection;

(3) the serial or identification numbers of the modules or modular components inspected;

(4) a list of nonconformances observed on the modules or modular components inspected (with appropriate design package references) and corrective action taken in each case;

(5) a list of deviations from the approved compliance control procedures (with section or manual references) observed during the certification inspection with the corrective action taken in each case;

(6) a list of conditions of certification with which the manufacturer must comply to maintain the certification;

(7) the date of certification;

(8) the following statement: "This report concludes that (name of agency), after evaluating the facility, certifies that (name of factory) of (city) is capable of producing (industrialized housing and buildings or modular components) in accordance with the approved building system and compliance control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Industrialized Building Code Council"; and

(9) the signature of the certification [~~inspection~~] team leader.

(e) [~~(d)~~] If the department [~~certification team~~] determines that the manufacturer is not capable of meeting the certification requirements or that the manufacturer is unable to complete the certification inspection requirements, then the certification team will issue a non-compliance report. The non-compliance report will detail the specific areas in which the manufacturer was found to be deficient and may make recommendations for improvement.

(f) If any personnel of a design review agency or third party inspection agency participate as members of a certification team, the agency is considered a participant in the certification team and is responsible for compliance with Texas Occupations Code, Chapter 1202, rules adopted by the commission, and decisions, actions, and interpretations of the council in performing the certification inspection and related activities.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606784
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 463-7348

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PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission proposes an amendment to §309.8, relating to the license fees charged to pari-mutuel racetracks. The amendment will create an annual license fee for active pari-mutuel racetracks, increase the annual license fee for licensed but inactive pari-mutuel racetracks, and delete the additional fee charged to an association that conducts the Breeders' Cup races.

Charla Ann King, Executive Secretary for the Texas Racing Commission, has determined that for the first five year period the amendment is in effect there will be no fiscal implications for local government as a result of enforcing the amendment. The amendment will have fiscal implications for state government, in that it will generate additional revenue for the Commission's dedicated account in the state treasury, which is used to fund all agency operations. Ms. King estimates that the amendment will generate an additional $452,500 in additional revenue during fiscal year 2007, and that the amendment will generate an additional $790,000 in each subsequent fiscal year.

Ms. King has also determined that for each year of the first five years the amendment is in effect the anticipated public benefit will be that the Commission will fully comply with applicable law by raising sufficient revenue to fund regulatory operations.

The exact cost of compliance to a pari-mutuel racetrack will vary, depending on the type and class of racetrack. Under the amendment, the annual license fee for racetracks will be as follows: The annual fee for an active greyhound racetrack will be $80,000 in fiscal year 2007 and $175,000 in each subsequent year. The annual fee for an active Class 1 racetrack will be $27,500 in fiscal year 2007 and $45,000 in each subsequent year. The annual fee for an active Class 2 racetrack will be $15,000 in fiscal year 2007 and each subsequent year. The annual fee for an active Class 3 or 4 racetrack will be $5,000 in fiscal year 2007 and each subsequent year.

Under the amendment, the annual license fee for licensed but inactive racetracks will be as follows: The annual fee for an inactive greyhound racetrack will be $125,000 in fiscal year 2007 and each subsequent year. The annual fee for an inactive Class 1 racetrack will be $125,000 in fiscal year 2007 and each subsequent year. The annual fee for an active Class 2 racetrack will be $55,000 in fiscal year 2007 and $75,000 in each subsequent year. The annual fee for an active Class 3 or 4 racetrack will be $25,000 in fiscal year 2007 and each subsequent year.

There is no anticipated economic cost to an individual required to comply with the proposed amendment.

There are no foreseeable implications relating to costs or revenues for small or micro-businesses as a result of enforcing or administering the proposed amendment.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

All comments or questions regarding the proposed amendment may be submitted in writing within 30 days following publication of this notice in the *Texas Register* to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, at P.O. Box 12080, Austin, Texas 78711-2080, telephone (512) 833-6699, or fax (512) 833-6907.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §5.01, which

authorizes the Commission to prescribe reasonable license fees for each category of license; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and §6.18, which authorizes the Commission to prescribe a reasonable annual fee to be paid by each racetrack licensee.

The amendment implements Texas Civil Statutes, Article 179e.

§309.8. Racetrack License Fees.

(a) - (b) (No change.)

(c) Annual License Fee.

(1) Active License Fee for State Fiscal Year Ending August 31, 2007. An association that is licensed and that is conducting live racing or simulcasting shall pay an annual active license fee. The fee is due to the Commission on April 16, 2007, for the State fiscal year ending August 31, 2007. The active license fee for a greyhound racing association is $80,000. The active license fee for a horse racing association is:

(A) for a Class 1 racetrack, $27,500;

(B) for a Class 2 racetrack, $15,000; and

(C) for a Class 3 or 4 racetrack, $5,000.

(2) Active License Fee for State Fiscal Years Beginning September 1, 2007, and thereafter. An association that is licensed and that is conducting live racing or simulcasting shall pay an annual active license fee. The fee is due to the Commission on January 31 of each State fiscal year. The active license fee for a greyhound racing association is $175,000. The active license fee for a horse racing association is:

(A) for a Class 1 racetrack, $45,000;

(B) for a Class 2 racetrack, $15,000; and

(C) for a Class 3 or 4 racetrack, $5,000.

(3) Inactive License Fee for State Fiscal Year Ending August 31, 2007. An association that is licensed but is not conducting live racing or simulcasting shall pay an inactive license fee. The fee is due to the Commission on April 16, 2007, for the State fiscal year ending August 31, 2007. The inactive license fee for a greyhound racing association is $125,000. The inactive license fee for a horse racing association is:

(A) for a Class 1 racetrack, $125,000;

(B) for a Class 2 racetrack, $55,000; and

(C) for a Class 3 or 4 racetrack, $25,000.

(4) [~~(c)~~] Inactive License Fee for State Fiscal Years Beginning September 1, 2007, and thereafter. An association that is licensed but is not conducting live racing or simulcasting shall pay an inactive license fee. The fee is due to the Commission on September 1 of each year. The inactive license fee for a greyhound racing association is $125,000 [~~$25,000~~]. The inactive license fee for a horse racing association is:

(A) [~~(1)~~] for a Class 1 racetrack, $125,000 [~~$25,000~~];

(B) [~~(2)~~] for a Class 2 racetrack, $75,000 [~~$20,000~~]; and

(C) [~~(3)~~] for a Class 3 or 4 racetrack, $25,000. [~~$3,500; and~~]

[~~(4) for a Class 4 racetrack, $1,250.~~]

(d) - (e) (No change.)

[~~(f) Breeders' Cup Fee. Due to the additional travel, personnel, and drug testing costs incurred by the Commission in conjunction with regulating the Breeders' Cup races, an association that conducts the Breeders' Cup races shall pay a fee of $10,000. The fee is due not later than 5:00 p.m. on the 30th day after the date the Breeders' Cup races are conducted.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606773
Mark Fenner
General Counsel
Texas Racing Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 659-4446

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.307

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 401, §401.307 (relating to "Pick 3" On-Line Game Rule). By separate action, the Commission will publish proposed new Title 16, Part 9, Chapter 401, §401.307 (relating to "Pick 3" On-Line Game Rule), which will authorize a new version of the Pick 3 on-line lottery game to be played in Texas. The Commission is proposing the repeal of the current rule and the adoption of a new rule, rather than an amendment of the current rule, in order to clarify language and eliminate unnecessary language throughout the rule.

Kathy Pyka, Controller, has determined for the first five-year period the repeal of the existing Pick 3 on-line game rule and subsequent proposed new Pick 3 on-line game rule are in effect, the Pick 3 rule change will result in an estimated $19.30 million if the Lucky Sum feature of the game is launched on July 22, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $0.46M; FY 08, $4.71M; FY 09, $4.71M; FY 10, $4.71M and FY 11, $4.71M. Ms. Pyka has determined that the Pick 3 rule change will result in an estimated $17.58 million in the first five-year period if the Lucky Sum feature of the game is launched on December 2, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $0.00M; FY 08, $3.45M; FY 09, $4.71M; FY 10, $4.71M and FY 11, $4.71M. Regardless of launch date, there will be no adverse effect on small businesses, micro businesses, or local or state employment.

Robert Tirloni, Products Manager, has determined that for each year of the first five-year period the repeal of the existing Pick 3 on-line game rule and subsequent proposed new Pick 3 on-line game rule will be in effect, the public benefit anticipated is additional revenue to the state and an opportunity for a wider variety of lottery games and features for players.

Comments on the proposed repeal may be submitted to Sarah Woelk, Special Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on January 11, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery, including the type of lottery games to be conducted. The repeal is also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by the proposed repeal.

§401.307. "Pick 3" On-Line Game Rule.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606672
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 344-5038

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16 TAC §401.307

The Texas Lottery Commission (Commission) proposes for public comment new Title 16, Part 9, Chapter 401, §401.307 (relating to "Pick 3" On-Line Game Rule). By separate action, the Commission proposes the repeal of existing Title 16, Part 9, Chapter 401, §401.307 (relating to "Pick 3" On-Line Game Rule). The new rule authorizes the executive director to add a "Lucky Sum" feature to the current Pick 3 game. A player who plays "Lucky Sum" wins a prize if the sum of the player's three numbers is the same as the sum of the three numbers drawn in the applicable drawing. A "Lucky Sum" play must occur in connection with a play of some other play type. The new rule also clarifies the previous version of the "Pick 3" on-line rule and eliminates unnecessary provisions.

Kathy Pyka, Controller, has determined that the Pick 3 rule change will result in an estimated $19.30 million in the first five-year period if the Lucky Sum feature of the game is launched on July 22, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $0.46M; FY 08, $4.71M; FY 09, $4.71M; FY 10, $4.71M and FY 11, $4.71M. Ms. Pyka has determined that the Pick 3 rule change will result in an estimated $17.58 million in the first five-year period if the Lucky Sum feature of the game is launched on December 2, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $0.00M; FY 08, $3.45M; FY 09, $4.71M; FY 10, $4.71M and FY 11, $4.71M. Regardless of launch date, there will be no adverse effect on small businesses, micro businesses, or local or state employment.

Robert Tirloni, Products Manager, has determined that for each year of the first five-year period the proposed new Pick 3 on-line game rule will be in effect, the public benefit anticipated is additional revenue to the state and an opportunity for a wider variety of lottery games and features for players.

Comments on the proposed new rule may be submitted to Sarah Woelk, Special Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on January 11, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new rule is proposed under Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery, including the type of lottery games to be conducted. The section is also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.307. "Pick 3" On-Line Game Rule.

(a) Pick 3. The executive director is authorized to conduct a game known as "Pick 3." The executive director may issue further directives and procedures for the conduct of Pick 3 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--A play other than a Lucky Sum play consists of:

(A) the selection of a play type;

(B) the selection of a Pick 3 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with subsection (c) of this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Lucky Sum Play--A Lucky Sum play consists of:

(A) the selection of the Lucky Sum play type in connection with an exact order play, an any order play, an exact order/any order play, or a combo play;

(B) the selection of a Lucky Sum base play amount of $.50, $1, $2, $3, $4 or $5; and

(C) the purchase of a ticket evidencing those selections.

(3) Playboard--A panel on a playslip containing three fields of numbers for use in selecting numbers for a Pick 3 play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Pick 3 plays.

(c) Play types

(1) Pick 3 may include the following play types: exact order, any order, exact/any order, combo, and Lucky Sum.

(A) An "exact order" play is a winning play if the player's three single-digit numbers match in exact order the three single-digit numbers drawn in the applicable drawing.

(B) An "any order" play is a winning play if the player's three single-digit numbers match in any order the three single-digit numbers drawn in the applicable drawing.

(i) An any order play is a 3-way play when any order play is selected as the play type in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. A 3-way any order play involves three possible winning combinations.

(ii) An any order play is a 6-way play when any order play is selected as the play type in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. A 6-way any order play involves six possible winning combinations.

(iii) Any order play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(C) An "exact order/any order" play is a winning play either if the player's three single-digit numbers match in exact order the numbers drawn in the applicable drawing or if the player's three single-digit numbers match in any order the numbers drawn in the applicable drawing.

(i) An exact order/any order play is a 3-way play when exact/any order play is selected as the play type in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. A 3-way exact/any order play involves four possible winning combinations.

(ii) An exact order/any order play is a 6-way play when exact/any order play is selected as the play type in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. A 6-way exact/any order play involves seven possible winning combinations.

(iii) An exact order/any order play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(D) A "combo" play combines all of the possible straight (exact) plays that can be played with the three single-digit numbers selected for the play.

(i) A combo play may be a 3-way combo play or a 6-way combo play.

(ii) 3-way combo play is combo play in connection with a set of three single-digit numbers that includes two occurrences of one single-digit number and one occurrence of one other single-digit number. A 3-way combo play involves three possible winning combinations.

(iii) 6-way combo play is combo play in connection with a set of three single-digit numbers that includes a single occurrence of three different single-digit numbers. A 6-way combo play involves six possible winning combinations.

(iv) Combo play is not permitted in connection with a set of numbers that includes three occurrences of one single-digit number.

(E) A "Lucky Sum" play is a winning play if the sum of the player's three single-digit numbers is the same as the sum of the three single-digit numbers drawn in the applicable drawing. A "Lucky Sum" play must occur in connection with a play of some other play type.

(2) The executive director shall determine a start date for "Lucky Sum" play. The start date shall be no later than December 31, 2006. Otherwise, the executive director may allow or disallow any type of play described in this subsection. Currently available play types must be posted on the commission's web site.

(d) Plays and tickets

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) A Pick 3 play involves the selection of three single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(3) The cost of an exact order play is the same as the Pick 3 base play amount selected for the play.

(4) The cost of an any order play is the same as the Pick 3 base play amount selected for the play.

(5) The cost of an exact order/any order play is:

(A) $1 if the Pick 3 base play amount selected for the play is $.50;

(B) $2 if the Pick 3 base play amount selected for the play is $1;

(C) $4 if the Pick 3 base play amount selected for the play is $2;

(D) $6 if the Pick 3 base play amount selected for the play is $3;

(E) $8 if the Pick 3 base play amount selected for the play is $4; or

(F) $10 if the Pick 3 base play amount selected for the play is $5.

(6) The cost of a combo play is determined by multiplying the Pick 3 base play amount selected for the play by the number of winning combinations possible with the three single-digit numbers selected for the play.

(7) The cost of a Lucky Sum play is the same as the Lucky Sum base pay amount selected for the Lucky Sum play. The cost of a Lucky Sum play is in addition to the cost of the Pick 3 play with which the Lucky Sum play is connected.

(8) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

(9) A player may complete up to five playboards on a single playslip.

(10) A person may select numbers for a play by:

(A) using a self-service terminal;

(B) using a playslip;

(C) requesting a retailer to use Quick Pick; or

(D) requesting a retailer to manually enter numbers into an on-line terminal.

(11) A player may select the play type, base play amount, and drawn date and time for a play by:

(A) using a self-service terminal;

(B) using a playslip; or

(C) requesting a retailer to manually enter the selections.

(12) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(13) An on-line retailer may accept a request to manually enter selections or to make quick-pick selections only if the request is made in person.

(14) A player may purchase one or more plays for any one or more of the next 12 drawings after the purchase.

(15) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(16) A playslip has no monetary value and is not evidence of a play.

(17) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(18) The commission shall establish a time period before each drawing during which tickets may not be sold.

(19) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays

(1) An on-line retailer may cancel a Pick 3 play only in accordance with the following provisions:

(A) The ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(B) The on-line retailer must have possession of the ticket evidencing the play;

(C) All Pick 3 plays evidenced by a single ticket must be cancelled;

(D) Cancellation may occur no later than 60 minutes after sale of the ticket evidencing the play;

(E) Cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play; and

(F) Cancellation must occur before midnight on the day the ticket evidencing the play was sold.

(2) An on-line retailer must retain the ticket and the cancellation receipt for the play(s) evidenced by that ticket for at least 30 days after the cancellation.

(f) Drawings

(1) Pick 3 drawings shall be held twice a day, Monday through Saturday, at 12:27 p.m. and 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) At each Pick 3 drawing, three single-digit numbers shall be drawn. Each single-digit number will be drawn from a set that includes a single occurrence of all ten single-digit numbers (0, 1, 2, 3, 4, 5, 6, 7, 8, and 9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(3) A Lucky Sum play is a separate play from the exact order play, any order play, exact order/any order play, or combo play with which it is connected.

(4) The executive director may temporarily increase any prize set out in this paragraph for promotional or marketing purposes.

(5) A person who holds a valid ticket for a winning exact order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(5)

(6) A person who holds a valid ticket for a winning 3-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(6)

(7) A person who holds a valid ticket for a winning 6-way any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(7)

(8) A person who holds a valid ticket for a winning 3-way exact order/any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(8)

(9) A person who holds a valid ticket for a winning 6-way exact order/any order play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(9)

(10) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.307(g)(10)

(11) A person who holds a valid ticket for a winning Lucky Sum play is entitled to a prize as shown. A Lucky Sum prize is in addition to a prize, if any, for the exact order play, any order play, exact order/any order play, or combo play to which the Lucky Sum play is connected.
Figure: 16 TAC §401.307(g)(11)

(h) The executive director may authorize promotions in connection with Pick 3. Current promotions must be posted on the commission's web site.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606670
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 344-5038

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16 TAC §401.316

The Texas Lottery Commission (Commission) proposes for public comment new Title 16, Part 9, Chapter 401, §401.316 (relating to "Daily 4" On-Line Game Rule). The new rule will authorize a new on-line lottery game to be played in Texas.

Kathy Pyka, Controller, has determined that the Daily 4 rule will result in an estimated $28.40 million in the first five-year period if the game is launched on May 20, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $1.80M; FY 08, $6.65M; FY 09, $6.65M; FY 10, $6.65M and FY 11, $6.65M. Ms. Pyka has determined that the Daily 4 rule will result in an estimated $25.97 million in the first five-year period if the game is launched on September 30, 2007. In that case, for each year of the first five years the rule will be in effect, the fiscal impact is the following: FY 07, $0.00M; FY 08, $6.02M; FY 09, $6.65M; FY 10, $6.65M and FY 11, $6.65M. Regardless of launch date, there will be no adverse effect on small businesses, micro businesses, or local or state employment.

Robert Tirloni, Products Manager, has determined that for each year of the first five-year period the proposed new Daily 4 on-line game rule will be in effect, the public benefit anticipated is additional revenue to the state and an opportunity for a wider variety of lottery games and features for players.

Comments on the proposed new rule may be submitted to Sarah Woelk, Special Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on January 11, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new rule is proposed under Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt rules governing the operation of the lottery, including the type of lottery games to be conducted. The section is also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.316. "Daily 4" On-Line Game Rule.

(a) Daily 4. The executive director is authorized to conduct a game known as "Daily 4." The executive director may issue further directives and procedures for the conduct of Daily 4 that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--A play other than a Lucky Sum play consists of:

(A) the selection of a play type;

(B) the selection of a Daily 4 base play amount of $.50, $1, $2, $3, $4 or $5;

(C) the selection of a draw date and time;

(D) the selection of numbers in accordance with subsection (d) of this section; and

(E) the purchase of a ticket evidencing those selections.

(2) Lucky Sum Play--A Lucky Sum play consists of:

(A) the selection of the Lucky Sum play type in connection with a straight play, a box play, a straight/box play, a combo play, a front-pair play, a mid-pair play, or a back-pair play;

(B) the selection of a Lucky Sum base play amount of $.50, $1, $2, $3, $4 or $5; and

(C) the purchase of a ticket evidencing those selections.

(3) Playboard--A panel on a playslip containing four fields of numbers for use in selecting numbers for a Daily 4 play, with each field of numbers containing the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8 and 9.

(4) Playslip--An optically readable card issued by the commission for use in making selections for one or more Daily 4 plays.

(c) Play types

(1) Daily 4 may include the following play types: straight, box, straight/box, combo, front-pair, mid-pair, back-pair, and Lucky Sum.

(A) A "straight" play is a winning play if the player's four single-digit numbers match in exact order the four single-digit numbers drawn in the applicable drawing.

(B) A "box" play is a winning play if the player's four single-digit numbers match in any order the four single-digit numbers drawn in the applicable drawing.

(i) A box play may be a 4-way box play, a 6-way box play, a 12-way box play, or a 24-way box play.

(I) A box play is a 4-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way box play involves four possible winning combinations.

(II) A box play is a 6-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way box play involves six possible winning combinations.

(III) A box play is a 12-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way box play involves 12 possible winning combinations.

(IV) A box play is a 24-way box play when box play is selected as the play type in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way box play involves 24 possible winning combinations.

(ii) Box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(C) A "straight/box" play is a winning play either if the player's four single-digit numbers match in exact order the numbers drawn in the applicable drawing or if the player's four single-digit numbers will match in any order the numbers drawn in the applicable drawing. The prize amount is greater if the player's four single-digit numbers match in exact order the numbers drawn in the applicable drawing.

(i) A straight/box play may be a 4-way straight/box play, a 6-way straight/box play, a 12-way straight/box play, or a 24-way straight/box play.

(I) A straight/box play is a 4-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A 4-way straight/box play involves four possible winning combinations.

(II) A straight/box play is a 6-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A 6-way straight/box play involves six possible winning combinations.

(III) A straight/box play is a 12-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way straight/box play involves 12 possible winning combinations.

(IV) A straight/box play is a 24-way straight/box play when straight/box play is selected in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way straight/box play involves 24 possible winning combinations.

(ii) Straight/box play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(D) A "combo" play combines all of the possible straight plays that can be played with the four single-digit numbers selected for the play.

(i) A combo play may be a 4-way combo play, a 6-way combo play, a 12-way combo play, or a 24-way combo play.

(I) 4-way combo play is combo play in connection with a set of four single-digit numbers that includes three occurrences of one single-digit number and one occurrence of one other single-digit number. A four-way combo play involves four possible winning combinations.

(II) 6-way combo play is combo play in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and two occurrences of another single-digit number. A six-way combo play involves six possible winning combinations.

(III) 12-way combo play is combo play in connection with a set of four single-digit numbers that includes two occurrences of one single-digit number and one occurrence of two other single-digit numbers. A 12-way combo play involves 12 possible winning combinations.

(IV) 24-way combo play is combo play in connection with a set of four single-digit numbers that includes a single occurrence of four different single-digit numbers. A 24-way combo play involves 24 possible winning combinations.

(ii) Combo play is not permitted in connection with a set of numbers that includes four occurrences of one single-digit number.

(E) Pair play

(i) A "front-pair" play is a winning play if the player's two single-digit numbers match in exact order the first two single-digit numbers drawn in the applicable drawing.

(ii) A "mid-pair" play is a winning play if the player's two single-digit numbers match in exact order the second and third single-digit numbers drawn in the applicable drawing.

(iii) A "back-pair" play is a winning play if the player's two single-digit numbers match in exact order the last two single-digit numbers drawn in the applicable drawing.

(F) A "Lucky Sum" play is a winning play if the sum of the player's two or four single-digit numbers, as applicable, is the same as the sum of the four single-digit numbers drawn in the applicable drawing. A "Lucky Sum" play must occur in connection with a play of some other play type.

(2) The executive director may allow or disallow any type of play described in this subsection. Currently available play types must be posted on the commission's web site.

(d) Plays and tickets

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The selection of numbers for a straight play, a box play, a straight/box play, or a combo play involves the selection of four single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(3) The selection of numbers for a front-pair play, a mid-pair play, or a back-pair play involves the selection of two single-digit numbers, with each selected from the numbers 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9.

(4) The cost of a play varies according to the play type selected for the play and the base play amount selected for the play.

(A) The cost of a straight play is the same as the base play amount selected for the play.

(B) The cost of a box play is the same as the base play amount selected for the play.

(C) The cost of a straight/box play is:

(i) $1 if the base play amount selected for the play is $.50;

(ii) $2 if the base play amount selected for the play is $1;

(iii) $4 if the base play amount selected for the play is $2;

(iv) $6 if the base play amount selected for the play is $3;

(v) $8 if the base play amount selected for the play is $4; or

(vi) $10 if the base play amount selected for the play is $5.

(D) The cost of a combo play is determined by multiplying the base play amount selected for the play by the number of winning combinations possible with the four single-digit numbers selected for the play.

(E) The cost of a front-pair, mid-pair, or back-pair play is the same as the base play amount selected for the play.

(F) The cost of a Lucky Sum play is the same as the Lucky Sum base play amount selected for the Lucky Sum play. The cost of a Lucky Sum play is in addition to the cost of the Daily 4 play with which the Lucky Sum play is connected.

(5) The cost of a ticket is determined by the total cost of the plays evidenced by the ticket.

(6) A player may complete up to five playboards on a single playslip.

(7) A person may select numbers for a play by:

(A) using a self-service terminal;

(B) using a playslip;

(C) requesting a retailer to use Quick Pick; or

(D) requesting a retailer to manually enter numbers into an on-line terminal.

(8) A player may select the play type, base play amount, and draw date and time for a play by:

(A) using a self-service terminal;

(B) using a playslip; or

(C) requesting a retailer to manually enter the play type.

(9) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(10) An on-line retailer may accept a request to manually enter selections or to make quick-pick selections only if the request is made in person.

(11) A player may purchase one or more plays for any one or more of the next 12 drawings after the purchase.

(12) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers, play type and base play amount selected for each play; the number of plays, the draw date(s) for which the plays were purchased; and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(13) A playslip has no monetary value and is not evidence of a play.

(14) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(15) The commission shall establish a time period before each drawing during which tickets may not be sold.

(16) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) Cancellation of plays

(1) An on-line retailer may cancel a Daily 4 play only in accordance with the following provisions:

(A) The ticket evidencing the play must have been sold at the retail location at which it is cancelled;

(B) The on-line retailer must have possession of the ticket evidencing the play;

(C) All Daily 4 plays evidenced by a single ticket must be cancelled;

(D) Cancellation may occur no later than 60 minutes after sale of the ticket evidencing the play;

(E) Cancellation must occur before the beginning of the next draw break after the sale of the ticket evidencing the play; and

(F) Cancellation must occur before midnight on the day the ticket evidencing the play was sold.

(2) An on-line retailer must retain the ticket and the cancellation receipt for the play(s) evidenced by that ticket for at least 30 days after the cancellation.

(f) Drawings

(1) Daily 4 drawings shall be held twice a day, Monday through Saturday, at 12:27 p.m. and 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) At each Daily 4 drawing, four single-digit numbers shall be drawn. Each single-digit number will be drawn from a set that includes a single occurrence of all ten single-digit numbers (0, 1, 2, 3, 4, 5, 6, 7, 8, and 9).

(3) Numbers drawn and the order in which the numbers are drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing and the order of the numbers selected in the drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(g) Prizes

(1) Prize payments shall be made upon completion of commission validation procedures.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(3) A Lucky Sum play is a separate play from the play with which it is connected.

(4) The executive director may temporarily increase any prize set out in this subsection for promotional or marketing purposes.

(5) A person who holds a valid ticket for a winning straight play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(5)

(6) A person who holds a valid ticket for a winning 4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(6)

(7) A person who holds a valid ticket for a winning 6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(7)

(8) A person who holds a valid ticket for a winning 12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(8)

(9) A person who holds a valid ticket for a winning 24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(9)

(10) A person who holds a valid ticket for a winning straight/4-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(10)

(11) A person who holds a valid ticket for a winning straight/6-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(11)

(12) A person who holds a valid ticket for a winning straight/12-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(12)

(13) A person who holds a valid ticket for a winning straight/24-way box play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(13)

(14) A person who holds a valid ticket for a winning combo play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(14)

(15) A person who holds a valid ticket for a winning front-pair, mid-pair, or back-pair play is entitled to a prize as shown.
Figure: 16 TAC §401.316(g)(15)

(16) A person who holds a valid ticket for a winning Lucky Sum play is entitled to a prize as shown. A Lucky Sum prize is in addition to a prize, if any, for a straight play, a box play, a straight/box play, or a combo play.
Figure: 16 TAC §401.316(g)(16)

(h) Start of Play. The executive director shall determine the start date for Daily 4. The start date shall be no later than December 31, 2007.

(i) The executive director may authorize promotions in connection with Daily 4. Any current promotions must be posted on the commission's web site.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 344-5038

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CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER C. BINGO GAMES AND EQUIPMENT

16 TAC §402.300

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.300 (Pull-Tab Bingo). The purpose of the proposed amendments is: (1) to provide manufacturers with more specific information on pull-tab ticket construction and packaging standards; (2) to provide more flexibility for manufacturers to design and sell pull-tab products; (3) to provide information on a new jackpot pull-tab game; (4) to provide for accountability for sales and redemption of pull-tab tickets; (5) to clarify permissibility of video confirmation of winners and digital flares; (6) to describe a new style of pull-tab game; and (7) to clarify existing language.

Subsection (a)(3), the definition of "Face" has been deleted in this proposal, and the other paragraphs have been renumbered accordingly.

Newly renumbered subsection (a)(3), the definition of "Flare" has been amended to include a digital representation.

Newly renumbered subsection (a)(5), the definition of "High Tier" has been amended by deleting "face of the."

Newly renumbered subsection (a)(10), the definition of "Payout Schedule" has been amended at subparagraph (E) by adding "or jackpot" and at subparagraph (I) by replacing "payout" with "payout(s)."

Newly renumbered subsection (a)(11), the definition of "Payout Structure" has been amended by deleting "face of a."

Subsection (a)(15), the definition of "Reverse" has been deleted in this proposal.

Newly renumbered subsection (a)(15) has been amended to include a new definition for "Subset."

Newly renumbered subsection (a)(17) has been amended to include a new definition for "Video Confirmation."

Subsection (b)(2) has been amended by deleting "the face and reverse" and replacing it with "both."

Subsection (b)(3)(B) - (F) have been amended by deleting "face of the" at each subparagraph.

Subsection (b)(3)(H) has been amended by deleting "reverse side."

Subsection (b)(4) has been amended by deleting an unnecessary comma.

Subsection (b)(5) has been amended to include "index color, or trademark(s)" and a new sentence, "Changes to symbols require only an artwork approval from the Commission."

Subsection (b)(7) has been deleted in this proposal.

Subsection (c)(1) has been amended by adding "will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved" and deleting "may not be displayed or sold in the state of Texas by licensed manufacturers."

Subsection (c)(2) has been amended by adding "No sale of disapproved tickets will be allowed until the resubmitted deal has passed security testing by the Commission."

Subsection (d)(2) has been amended by adding "If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it includes a winner or contains a disproportionate share of winning or losing tickets."

Subsection (d)(6) has been amended by adding "The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section" and deleting "The flare for the deal."

Subsection (d)(11) has been amended by adding "package, box, or container of a."

Subsection (d)(12)(A) has been amended by deleting "face from the reverse."

Subsection (d)(12)(C) has been amended by deleting "and."

Subsection (d)(12)(D) has been deleted and new subparagraphs (D) - (H) have been added to the paragraph.

Subsection (e)(1) has been amended by deleting "purchased" and replacing it with "available." Also, "$5.00" has been changed to "$25.00."

Subsection (e)(2) has been amended by adding "Except as provided by paragraph (3) or (4) of this subsection, a," and deleting "winning."

New subsection (e)(3) and (4) are new provisions to the rule. Subsequent paragraphs are renumbered accordingly.

Newly renumbered subsection (e)(6) has been amended by changing "$5.00" to "$25.00" and by deleting "either cashed, or."

Newly renumbered subsection (e)(9) has been amended by adding "on a form prescribed by the Commission."

New subsection (e)(10) is added as follows: "(10) A licensed authorized organization may use video confirmation to display the results of event tickets, game(s), or flare. Video confirmation will have no effect on the play or results of any event ticket or game."

Subsection (g)(4) is amended by changing "$5.00" to "$25.00."

Finally, subsection (h)(9) and (10), relating to jackpot pull-tab game and video confirmation are new provisions to the rule.

Kathy Pyka, Controller, has determined that for the first five-year period there will be no significant fiscal impact for state or local government as a result of enforcing these rule amendments. Any costs to the State could be absorbed by current resources. There will be no adverse effect on small businesses, micro businesses, or local or state employment.

Philip D. Sanderson, Assistant Director of the Charitable Bingo Operations Division, has determined that for each of the first five years the proposed amendments are in effect, licensees will benefit because the proposed amendments are designed to provide additional clarification relating to requirements for manufacturing, sales, and redemption of pull-tab bingo tickets. The new language will provide licensees with additional information to assist them in remaining in compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

Comments on the proposed new rule may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 9:00 a.m. on January 18, 2007, at 611 E. 6th Street, Austin, Texas. If necessary, the public hearing will be continued at 9:00 a.m. on January 19, 2007. Comments must be received within 30 days after publication of the proposed amendments in the *Texas Register* in order to be considered.

The amendments are proposed under Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

§402.300. Pull Tab Bingo.

(a) Definitions. The following words and terms, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Ball Draw--A pulling of a bingo ball(s) to determine the winner of an event ticket by either the number or color on the ball(s).

(2) Deal--A separate and specific game of pull-tab bingo tickets of the same serial number and form number.

~~[(3) Face--The front of a pull-tab bingo ticket, which displays the artwork of a specific game. The front of the pull-tab bingo ticket includes, but is not limited to, the name of the game, the price of the game and the payout structure of the game.]~~

(3) [~~(4)~~] Flare--A poster, [~~or~~] placard, or digital representation that must display:

(A) a form number of a specific pull-tab bingo game;

(B) the name of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amounts of the pull-tab bingo game; and

(F) the name of the manufacturer or trademark.

(4) [~~(5)~~] Form Number--The unique identification number assigned by the manufacturer to a specific pull-tab bingo game. A form number may be numeric, alpha, or a combination of numeric and alpha characters.

(5) [~~(6)~~] High Tier--The two highest paying prize amounts as designated on the [~~face of the~~] pull-tab bingo ticket and on the game's flare.

(6) [~~(7)~~] Last Sale--The purchaser of the last pull-tab bingo ticket(s) sold in a deal with this feature is awarded a prize or a registration for the opportunity to win a prize.

(7) [~~(8)~~] Merchandise--Any non-cash item(s) provided to a licensed authorized organization that is used as a prize.

(8) [~~(9)~~] Wheels--Devices that determine event ticket winner(s) by a spin of a wheel.

(9) [~~(10)~~] Pay-Out--The total sum of all possible prize amounts in a pull-tab bingo game.

(10) [~~(11)~~] Payout Schedule--A printed schedule prepared by the manufacturer that displays:

(A) the name of the pull-tab bingo game;

(B) the form number of the pull-tab bingo game;

(C) the total card count of the pull-tab bingo game;

(D) the cost per pull-tab bingo ticket;

(E) the number of prizes to be awarded and the corresponding prize amount or jackpot for each category of the pull-tab bingo game;

(F) the number of winners for each category of prize;

(G) the profit of the pull-tab bingo game;

(H) the percentage of payout or the percentage of profit of the pull-tab bingo game; and

(I) the payout(s) [~~payout~~] of the pull-tab bingo game.

(11) [~~(12)~~] Payout Structure--The printed information that appears on the [~~face of a~~] pull-tab bingo ticket. This display shows the winnable prize amounts, the winning patterns required to win a prize, and the number of winners for each category of prize.

(12) [~~(13)~~] Prize--An award of collectible items, merchandise, cash, bonus pull-tabs, and additional pull-tab bingo tickets, individually or in any combination.

(13) [~~(14)~~] Prize Amount--The value of cash and/or the fair market value of merchandise which is awarded as a prize. A collectable item is considered merchandise for determining allowable prize amounts. If a manufacturer or distributor supplies a merchandise prize, the manufacturer or distributor must determine the fair market value of the merchandise prize, otherwise the fair market value of a merchandise prize must be determined by the authorized organization.

~~[(15) Reverse--The back of a pull-tab bingo ticket that has a perforated break-open tab(s) that when opened reveals one or more numbers and/or symbols that appear under the tab(s).]~~

(14) [~~(16)~~] Serial Number--The unique identification number assigned by the manufacturer identifying a specific deal of pull-tab bingo tickets. A serial number may be numeric, alpha, or a combination of numeric and alpha characters.

(15) Subset--A part of a deal that is played as a game to itself or combined with more subsets and played as a game. Each subset may be designed to have:

(A) a designated payout; or

(B) a series of designated payouts. Subsets must be of the same form and serial number to have a combined designated payout or a series of designated payouts.

(16) [~~(17)~~] Symbol--A graphic representation of an object other than a numeric or alpha character.

(17) Video Confirmation--A graphic and dynamic representation of the flare or the outcome of a bingo event ticket that will have no effect on the result of the winning or losing event ticket. It may include a system to allow a player to choose a prize or prizes.

(b) Approval of pull-tab bingo tickets.

(1) A pull-tab bingo ticket may not be sold in the state of Texas, nor furnished to any person in this state nor used for play in this state until that pull-tab bingo ticket has received approval for use within the state of Texas by the Commission. The manufacturer at its own expense must present their pull-tab bingo ticket to the Commission for approval.

(2) All pull-tab bingo ticket color artwork with a letter of introduction including style of play must be presented to the Commission's Austin, Texas location for review. The manufacturer must submit one complete color positive or hardcopy set of the color artwork for each pull-tab bingo ticket and its accompanying flare. The color artwork may be submitted in an electronic format prescribed by the Commission in lieu of the hardcopy submission. The submission must include the payout schedule. The submission must show both [~~the face and reverse~~] sides of a pull-tab bingo ticket and must be submitted on an 8 1/2" x 11" size sheet. The color artwork will show the actual size of the ticket and a 200% size of the ticket. The color artwork will clearly identify all winning and non-winning symbols. The color artwork will clearly identify the winnable patterns and combinations.

(3) The color artwork for each individual pull-tab bingo ticket must:

(A) display in no less than 26-point diameter circle, an impression of the Commission's seal with the words "Texas Lottery Commission" engraved around the margin and a five-pointed star in the center;

(B) contain the name of the game in a conspicuous location on the [~~face of the~~] pull-tab bingo ticket;

(C) contain the form number assigned by the manufacturer in a conspicuous location on the [~~face of the~~] pull-tab bingo ticket;

(D) contain the manufacturer's name or trademark in a conspicuous location on the [~~face of the~~] pull-tab bingo ticket;

(E) disclose the prize amount and number of winners for each prize amount, the number of individual pull-tab bingo tickets contained in the deal, and the cost per pull-tab bingo ticket in a conspicuous location on the [~~face of the~~] pull-tab bingo ticket;

(F) display the serial number where it will be printed in a conspicuous location on the [~~face of the~~] pull-tab bingo ticket. The color artwork may display the word "sample" or number "000000" in lieu of the serial number;

(G) contain graphic symbols that preserve the integrity of the Commission. The Commission will not approve any pull-tab bingo ticket that displays images or text that could be interpreted as depicting alcoholic beverages, weapons, profane language, provocative, explicit or derogatory images or text. All images or text are subject to final approval by the Commission; and

(H) be accompanied with the color artwork of the pull-tab bingo tickets [~~reverse side~~] along with a list of all other colors that will be printed with the game.

(4) Upon approval of the color artwork, the manufacturer will be notified by the Commission to submit one deal, for testing. The deal must be submitted for testing to the Commission at the manufacturers own expense. If necessary, the Commission may request that additional deals be submitted for testing.

(5) If the color artwork is approved and the pull-tab bingo deal(s) pass the Commission's testing, the manufacturer will be notified of the approval. This approval only extends to the specific pull-tab bingo game and the specific form number cited in the Commission's approval letter. If the pull-tab bingo ticket is modified in any way, with the exception of the serial number, index color, or trademark(s), it must be resubmitted to the Commission for approval. Changes to symbols require only an artwork approval from the Commission.

(6) The Commission may require resubmission of an approved pull-tab bingo ticket at any time.

~~[(7) If an approved pull-tab bingo game is discontinued or no longer manufactured for sale in Texas, the manufacturer of this game must provide the Commission written notification within ten days of this change. The notification must include the name of the pull-tab bingo game and the form number of the pull-tab bingo ticket. The written notification may be sent to the Commission via facsimile, e-mail,~~

~~delivery services or postal delivery. Notification that a game has been discontinued does not preclude a manufacturer, distributor or authorized organization from continuing to sell any deals produced prior to the date the game was discontinued. A manufacturer may reactivate a discontinued game by submitting a request to the Commission with a statement that the artwork for the discontinued game has not changed and by submitting the appropriate number of deals for testing from the next print run from the reactivated game. If the manufacturer does want to reactivate a game and make changes to the artwork then the artwork must be resubmitted for approval.]~~

(c) Disapproval of pull-tab bingo tickets.

(1) Upon inspection of a pull-tab bingo ticket by the Commission and if it is deemed not to properly preserve the integrity or security of the Commission including compliance with the art work requirements of this rule, the Commission may disapprove a pull-tab bingo ticket. All pull-tab bingo tickets that are disapproved by the Commission will cease to be allowed for sale until such time as the manufacturer complies with the written instructions of the Commission, or until any discrepancies are resolved. [~~may not be displayed or sold in the state of Texas by licensed manufacturers.~~] Disapproval of and prohibition to use, purchase, sell or otherwise distribute such a pull-tab bingo ticket is effective immediately upon notice to the manufacturer by the Commission. Upon receipt of such notice, the manufacturer must immediately notify the distributor and the distributor must immediately notify affected licensed authorized organizations to cease all use, purchase, sale or other distribution of the disapproved pull-tab ticket. The distributor must provide to the Commission, within 15 days of the Commission's notice to the manufacturer, confirmation that the distributor has notified the licensed authorized organization that the pull-tab ticket has been disapproved and sale and use of the disapproved ticket must cease immediately.

(2) If modified by the manufacturer all disapproved pull-tab bingo tickets may be resubmitted to the Commission. No sale of disapproved tickets will be allowed until the resubmitted deal has passed security testing by the Commission. At any time the manufacturer may withdraw any disapproved pull-tab bingo tickets from further consideration.

(3) The Commission may disapprove a pull-tab bingo game at any stage of review, which includes artwork review and security testing, or at any time in the duration of a pull-tab bingo game. The disapproval of a pull-tab bingo ticket is administratively final.

(d) Manufacturing requirements.

(1) Manufacturers of pull-tab bingo tickets must manufacture, assemble, and package each deal in such a manner that none of the winning pull-tab bingo tickets, nor the location, or approximate location of any winning pull-tab bingo ticket can be determined in advance of opening the deal by any means or device. Nor should the winning pull-tab bingo tickets, or the location or approximate location of any winning pull-tab bingo ticket be determined in advance of opening the deal by manufacture, printing, color variations, assembly, packaging markings, or by use of a light. Each manufacturer is subject to inspection by the Commission, its authorized representative, or designee.

(2) All winning pull-tab bingo tickets as identified on the payout schedule must be randomly distributed and mixed among all other pull-tab bingo tickets of the same serial number in a deal regardless of the number of packages, boxes, or other containers in which the deal is packaged. The position of any winning pull-tab bingo ticket of the same serial numbers must not demonstrate a pattern within the deal or within a portion of the deal. If a deal of pull-tabs is packed in more than one box or container, no individual container may indicate that it includes a winner or contains a disproportionate share of winning or losing tickets.

(3) Each deal of pull-tab bingo tickets must contain a packing slip inside the deal. This packing slip must substantiate the name of the manufacturer, the serial number for the specific deal, the date the deal was packaged, and the name or other identification of the person who packaged the deal.

(4) Each deal's package, box, or other container shall be sealed at the manufacturer's factory with a seal including a warning to the purchaser that the deal may have been tampered with if the package, box, or other container was received by the purchaser with the seal broken.

(5) Each deal's serial number shall be clearly and legibly placed on the outside of the deal's package, box or other container or be able to be viewed from the outside of the package, box or container.

(6) The information contained in subsection (a)(3)(A), (B), (C), (D), and (F) of this section [~~The flare for the deal~~] shall be located on the outside of each deal's sealed package, box, or other container.

(7) Manufacturers must seal or tape, with tamper resistant seal or tape, every entry point into a package, box or container of pull-tab bingo tickets prior to shipment. The seal or tape must be of such construction as to guarantee that should the container be opened or tampered with, such tampering or opening would be easily discernible.

(8) All high tier winning instant pull-tab bingo tickets must utilize a secondary form of winner verification.

(9) Each individual pull-tab bingo ticket must be constructed so that, until opened by a player, it is substantially impossible, in the opinion of the Commission, to determine its concealed letter(s), number(s) or symbol(s).

(10) No manufacturer may sell or otherwise provide to a distributor and no distributor may sell or otherwise provide to a licensed authorized organization of this state or for use in this state any pull-tab bingo game that does not contain a minimum prize payout of 65% of total receipts if completely sold out.

(11) A manufacturer in selling or providing pull-tab bingo tickets to a distributor shall seal or shrink-wrap each package, box, or container of a deal completely in a clear wrapping material.

(12) Pull-tab bingo tickets must:

(A) be constructed of cardboard and glued or otherwise securely sealed along all four edges of the pull-tab bingo ticket and between the individual perforated break-open tab(s) on the ticket. The glue must be of sufficient strength and type so as to prevent the separation of the [~~face from the reverse~~] sides of a pull-tab bingo ticket;

(B) have letters, numbers or symbols that are concealed behind perforated window tab(s), and allow such letters, numbers or symbols to be revealed only after the player has physically removed the perforated window tab(s);

(C) prevent the determination of a winning or losing pull-tab bingo ticket by any means other than the physical removal of the perforated window tab(s) by the player; [~~and~~]

(D) be designed so that the numbers and symbols are a minimum of 2.5/32 (5/64) inch from the dye-cut window perforations, except for a five window tab which may be 2/32 (4/64) from the dye-cut window perforations;

(E) be designed so that the lines or arrows that identify the winning symbol combinations will be a minimum of 5/32 inch from

the open edge farthest from the hinge of the dye-cut window perforations;

(F) be designed so that highlighted "pay-code" designations that identify the winning symbol combinations will be a minimum of 3.5/32 inch from the dye-cut window perforations;

(G) be designed so that secondary winner protection codes appear in the left margin of the ticket, unless the secondary winner protection codes are randomly generated serial number-type winner protection codes. Randomly generated serial number-type winner protection codes will be randomly located in either the left or middle column of symbols and will be designed so that the numbers are a minimum of 3.5/32 inch from the dye-cut window perforations. Any colored line or bar or background used to highlight the winner protection code will be a minimum 3.5/32 (7/64) inch from the dye-cut window perforations; and

(H) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer.

[~~(D) have the Commission's seal placed on all pull-tab bingo tickets by only a licensed manufacturer.~~]

(13) Wheels must be submitted to the Commission for approval. As a part of the approval process, the following requirements must be demonstrated to the satisfaction of the Commission:

(A) wheels must be able to spin at least four times with reasonable effort;

(B) wheels must only contain the same number or symbols as represented on the event ticket; and

(C) locking mechanisms must be installed on wheel(s) to prevent play outside the licensed authorized organization's licensed time(s).

(e) Sales and redemption.

(1) All winning pull-tab bingo tickets must be presented for payment during the licensed authorized organization's licensed times at which the pull-tab bingo ticket is available. [~~purchased.~~] Immediately upon payment a licensed authorized organization must punch a hole with a standard hole punch through or otherwise mark or deface each winning pull-tab bingo ticket of $25.00 [~~$5.00~~] or more.

(2) Except as provided by paragraph (3) or (4) of this subsection, a [~~A~~] licensed authorized organization may sell or redeem [~~winning~~] pull-tab bingo tickets on the premises specified in its bingo license only:

(A) during the licensed authorized organization's licensed times; or

(B) during a required intermission between the bingo occasions of two licensed authorized organizations.

(3) For a licensed authorized organization that conducts bingo through a unit created and operated under Texas Occupations Code, Subchapter I-1, any organization in the unit may sell or redeem pull-tab tickets from a deal on the premises specified in their bingo licenses and during such licensed time until the deal is withdrawn under paragraph (6) of this subsection.

(4) For a licensed authorized organization that conducts bingo on consecutive occasions within one 24-hour period, the organization may sell or redeem pull-tab tickets from a deal during either occasion and during an intermission between the two bingo occasions.

(5) [~~(3)~~] Licensed authorized organizations may not display or sell any pull-tab bingo ticket which has in any manner been marked, defaced, tampered with, or which otherwise may deceive the public or affect a person's chances of winning.

(6) [~~(4)~~] A licensed authorized organization may not withdraw a deal of pull-tab bingo tickets from play until the entire deal is completely sold out or all winning pull-tab bingo tickets of $25.00 [~~$5.00~~] prize winnings or more have been [~~either cashed, or~~] redeemed, or the bingo occasion ends.

(7) [~~(5)~~] A licensed authorized organization may not commingle different serial numbers of the same form number of pull-tab bingo tickets.

(8) [~~(6)~~] A licensed authorized organization may bundle pull-tab bingo tickets of different form numbers and may sell these bundled pull-tab bingo tickets during their licensed times.

(9) [~~(7)~~] The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization. Each deal of pull-tab bingo tickets must be accounted for in sales, prizes or unsold cards on a form prescribed by the Commission.

(10) A licensed authorized organization may use video confirmation to display the results of event tickets, game(s), or flare. Video confirmation will have no effect on the play or results of any event ticket or game.

(f) Inspection. The Commission, its authorized representative or designee may examine and inspect any individual pull-tab bingo ticket or deal of pull-tab bingo tickets and may pull all remaining pull-tab bingo tickets in an unsold deal.

(g) Records.

(1) Any licensed authorized organization selling pull-tab bingo tickets must maintain a purchase log showing:

(A) the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets; and

(B) the name, address, and taxpayer number of the distributor from whom the pull-tab bingo tickets were purchased.

(2) Licensed authorized organizations must show the sale of pull-tab bingo tickets, prizes that were paid and the serial number of the pull-tab bingo tickets on the daily cash report. The aggregate total sales for the licensed authorized organization must be recorded on the cash register.

(3) Licensed authorized organizations must maintain a perpetual inventory of all pull-tab bingo games. They must account for all sold and unsold pull-tab bingo tickets and pull-tab bingo tickets designated for destruction. The licensed authorized organization will be responsible for the gross receipts, prizes and prize fee associated with the unaccounted for pull-tab bingo tickets.

(4) As long as a specific pull-tab bingo game serial number is in play, all records, reports, receipts and redeemed winning pull-tab bingo tickets of $25.00 [~~$5.00~~] or more relating to this specific pull-tab bingo game serial number must be retained on the licensed premises for examination by the Commission.

(5) If a deal is removed from play and marked for destruction then all redeemed [~~winning~~] and unsold pull-tab bingo tickets of the deal must be retained by the licensed authorized organization for a period of four years from the date the deal is taken out of play or until the destruction of the deal is witnessed by the Commission, its authorized representative or designee.

(6) Manufacturers and distributors must provide the following information on each invoice and other document used in connection with a sale of pull-tab bingo tickets:

(A) date of sale;

(B) quantity sold;

(C) cost per each deal of pull-tab bingo game sold;

(D) serial number of each pull-tab bingo game's deal;

(E) name and address of the purchaser; and

(F) Texas taxpayer number of the purchaser.

(7) All licensed organizations must retain these records for a period of four years.

(h) Style of Play. The following pull-tab bingo tickets are authorized by this rule. A last sale feature can be utilized on any pull-tab bingo ticket.

(1) Sign-up Board. A form of pull-tab bingo that is played with a sign-up board. Sign-up board tickets that contain a winning numeric, alpha or symbol instantly win the stated prize or qualify to advance to the sign-up board. The sign-up board that serves as the game flare is where identified winning sign-up board ticket holders may register for the opportunity to win the prize indicated on the sign-up board.

(2) Sign-up Board Ticket. A sign up board ticket is a form of pull-tab bingo played with a sign-up board. A single window or multiple windows sign-up board ticket reveals a winning (or losing) numeric, alpha or symbol that corresponds with the sign-up board.

(3) Tip Board. A form of pull-tab game where perforated tickets attached to a placard that have a predetermined winner under a seal.

(4) Coin Board. A placard that contains prizes consisting of coin(s). Coin boards can have a sign-up board as part of its placard.

(5) Coin Board Ticket. A form of pull-tab bingo that when opened reveals a winning number or symbol that corresponds with the coin board.

(6) Event Ticket. Pull-tab bingo tickets used as event tickets must contain more than two instant winners. Event ticket winner(s) are determined by some subsequent action such as a drawing of ball(s), spinning wheel, opening of a seal on a flare(s) or any other method approved by the Commission so long as that method has designated numbers, letters, or symbols that conform to the randomly selected numbers or symbols.

(7) Instant Ticket. A form of pull-tab bingo that have predetermined winners and losers and have immediate recognition of the winners and losers.

(8) Multiple Part Event or Multiple Part Instant Ticket. An event ticket that is broken apart and sold in sections by a licensed authorized organization. Each section of the ticket consists of a separate deal with its own corresponding payout structure, serial number, and winner verification.

(9) Jackpot Pull-Tab Game. A style of pull-tab game that has a stated prize and a chance at a jackpot prize(s). A portion of the stated payout is contributed to the jackpot prize(s). Each jackpot is continuous for the same form number and continues until a jackpot prize(s) is awarded; provided that any jackpot prize(s) must not exceed the statutory limits.

(10) Video Confirmation shall be subject to Commission approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

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16 TAC §402.305

The Texas Lottery Commission (Commission) proposes for public comment new Title 16, Part 9, Chapter 402, Subchapter C, §402.305 (relating to Progressive Bingo). The purpose of the new rule is to ensure that the Texas charitable bingo industry has information on requirements for conducting and reporting a style of bingo game known as progressive bingo.

Proposed new subsection (a) sets forth definitions for jackpot prize, consolation prize, progressive game, and progression.

Proposed new subsection (b) provides that more than one progressive game may be conducted at a bingo occasion.

Proposed new subsection (c) sets forth card requirements.

Proposed new subsection (d) sets forth prize amount requirements.

Proposed new subsection (e) states that if a jackpot prize for a progressive game is not awarded at a bingo occasion, the progressive game must be continued at a subsequent bingo occasion of the same licensed authorized organization.

Proposed new subsection (f) sets forth requirements for maximum ball calls allowable on the first occasion of a progressive game and the allowable increase in the number of ball calls on each successive bingo occasion until the jackpot prize is awarded.

Proposed new subsection (g) sets forth the requirements for a situation in which no player achieves a winning pattern in the number of allowable ball calls for that occasion.

Proposed new subsection (h) sets forth the requirements of a licensed authorized organization conducting a progressive game to post house rules, including what information must be included in the house rules.

Proposed new subsection (i) sets forth announcing requirements.

Proposed new subsection (j) sets forth the responsibilities as they relate to progressive games if more than one licensed authorized organization conducts bingo at the same location.

Finally, proposed new subsection (k) sets forth record keeping requirements.

The new rule is promulgated under Occupations Code §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

Kathy Pyka, Controller, has determined for the first five-year period there will be no significant fiscal impact for state or local government as a result of enforcing this new rule. Any costs to the State could be absorbed by current resources. There will be no adverse effect on small businesses, micro businesses, or local or state employment.

Philip D. Sanderson, Assistant Director of the Charitable Bingo Operations Division, has determined for each of the first five years the proposed new rule is in effect, licensees will benefit because the new section is designed to provide specific information on requirements for conducting and reporting progressive bingo games, protect the public, and encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

Comments on the proposed new rule may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 9:00 a.m. on January 18, 2007, at 611 E. 6th Street, Austin, Texas. If necessary, the public hearing will be continued at 9:00 a.m. on January 19, 2007. Comments must be received within 30 days after publication of this proposed new rule in order to be considered.

The new section is proposed pursuant to Occupations Code §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

The new rule implements Occupations Code, Chapter 2001.

§402.305. Progressive Bingo.

(a) Definitions.

(1) Jackpot prize--a prize offered or awarded to a winner of a progressive game.

(2) Consolation prize--a prize awarded if no player achieves the designated winning pattern within the number of ball calls allowed.

(3) Progressive game--a game in which the established prize(s) amount must be increased from one occasion to the next scheduled occasion if no player completes the required winning pattern for the game as posted by the licensed authorized organization.

(4) Progression--a series of progressive games that continue until a jackpot prize is awarded.

(b) More than one progressive game may be conducted at a bingo occasion so long as each game is played separately, separate records are maintained, and the prizes offered or awarded on a single bingo occasion do not exceed an aggregate value of more than $2,500.

(c) Cards.

(1) Any disposable bingo card/paper to be used for a progressive game by a licensed authorized organization during their bingo occasion must not duplicate any other disposable bingo card/paper being used at the same bingo occasion.

(2) All disposable bingo card/paper sheets, and the electronic equivalent, sold for the progressive game shall be sold for the same price.

(3) The disposable bingo cards/paper sheets for the progressive game shall not be sold as part of an UPS pad.

(4) All bingo cards used in the progressive game shall be sold prior to the drawing of the first ball for that game.

(d) Prize Amounts.

(1) The amount of a prize offered or awarded for a progressive game may not exceed statutory limits or cause the total prize amounts offered or awarded for an occasion to exceed statutory limits.

(2) The starting jackpot prize for each progressive game is an amount predetermined by each individual licensed authorized organization.

(3) On each succeeding occasion, the jackpot prize is the entire amount of the preceding occasion's jackpot prize plus the amount increased as stated in the organization's house rules for the progressive game but shall not exceed the statutory limitations pertaining to prizes.

(4) Each licensed authorized organization shall set a predetermined amount to be awarded as a consolation prize. If the jackpot prize is won, no consolation prize shall be awarded.

(e) If the jackpot prize for a progressive game is not awarded at a bingo occasion, the progressive game must be continued at a subsequent bingo occasion of the same licensed authorized organization, as stated in the house rules, until a jackpot prize winner is declared.

(f) On the first bingo occasion of a progressive game, a licensed authorized organization shall establish the maximum number of ball calls needed to win the jackpot prize. The number of allowable ball calls shall increase by one on each successive bingo occasion in a particular progression until the jackpot prize is awarded.

(g) If no player achieves a winning pattern in the number of allowable ball calls for that occasion, the licensed authorized organization shall continue the ball calls until at least one player achieves the winning pattern at which time the licensed authorized organization will award the consolation prize.

(h) Posting. A licensed authorized organization conducting a progressive game must post the house rules for the progressive game in a conspicuous place available for players review before the start of the bingo occasion. The posted house rules must remain in effect until a jackpot prize winner is declared for the progressive game. The house rules shall include the following information:

(1) the designated pattern for the progressive game;

(2) the maximum number of allowable ball calls in which the player must complete a winning pattern in order to win the progressive game jackpot prize for that occasion;

(3) the occasion's progressive game jackpot prize amount;

(4) the amount of the consolation prize;

(5) the date the next bingo occasion will occur in that particular progression if the jackpot is not awarded;

(6) the serial number(s) color or design of the disposable bingo card, and if applicable, the game number for electronic card-minding devices used in the progressive game; and

(7) the current date and license time of the occasion.

(i) Announcing. Prior to the start of the progressive bingo game, the licensed authorized organization shall announce the information required in subsection (h)(1) - (6) of this section.

(j) If more than one licensed authorized organization conducts bingo at the same location, each organization is responsible for its own progressive game.

(k) Record Keeping.

(1) A jackpot prize(s) may be paid by check or cash.

(2) The licensed authorized organization must maintain on forms prescribed by the Commission, or an electronic equivalent, adequate records to substantiate the gross receipts and prizes paid in conjunction with a progressive game.

(3) These forms will contain the following information:

(A) number of each ball called and the order in which the ball was called;

(B) name and taxpayer number of the licensed authorized organization, name(s) of the person(s) completing the form, the date of the progressive game, and the winning pattern;

(C) sales information, including worker's name, bingo card (type, color, style), serial number, number of sheets issued, number of sheets returned, number of sheets sold, selling price, gross receipts, and cash over/short for each worker;

(D) total disposable bingo card/paper sheets, electronic card sales for the game, and total progressive game sales; and

(E) prize accountability--the accountability--the beginning jackpot prize amount or amount carried forward; jackpot prize amount increases for the occasion; jackpot prize amount offered; number of ball calls required to win the jackpot prize; method of payment for any jackpot prize awarded, including the check number if payment by check; and if no jackpot winner, the consolation prize awarded.

(4) Records must be maintained for a period of four years from the date of the first progressive game of a particular progression.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.400

The Texas Lottery Commission (Commission) proposes amendments to 16 TAC §402.400 (relating to General Licensing Provisions). The purpose of the proposed amendments is to set forth new application guidelines which allow an authorized organization to submit an original application to conduct bingo without noting playing location, days, times, and starting date if the authorized organization is requesting a determination of eligibility status for a license to conduct bingo.

New subsection (r)(1) provides that an organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

New subsection (r)(2) states that all other information on the application must be complete and in compliance with the statute and rules.

New subsection (r)(3) sets forth the fee associated with submitting a request for a determination of eligibility status, and how the fee will be applied.

New subsection (r)(4) states that the Commission will provide the authorized organization written notice of eligibility status if license eligibility requirements have been met by the authorized organization.

New subsection (r)(5) states that within 180 days of the date the Commission provides notice of eligibility status, the authorized organization must submit a Commission approved form indicating playing location, days, times, and starting date of the bingo occasions.

New subsection (r)(6) states that upon the applicant's request, the Commission may issue a temporary authorization to conduct bingo for a period of 60 days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

Finally, new subsection (r)(7) states that in order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and has informed the Commission of its intended playing location, days, times, and starting date must also submit the required bond, any remainder of the appropriate license fee, and confirmation of the accuracy of information provided on the application to conduct bingo. It further states that the Commission will notify the applicant of the required license fee and bond amounts within 14 days of receipt of the required information.

Kathy Pyka, Controller, has determined that for the first five-year period there will be no significant fiscal impact for state or local government as a result of enforcing this new rule. Any costs to the State could be absorbed by current resources. The requirement that a $100 portion of the applicable license fee be submitted with an application requesting a determination of eligibility status was considered but determined to be negligible since the fee will be applied to a license fee. There will be no adverse effect on small businesses, micro businesses, or local or state employment.

Philip D. Sanderson, Assistant Director of the Charitable Bingo Operations Division, has determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated is that an organization wishing to conduct charitable bingo may apply and receive a determination of its eligibility to receive a license to conduct bingo prior to having identified the playing location, days, times, and starting date.

Comments on the proposed amendments may be submitted to Sandra Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 9:00 a.m. on January 18, 2007, at 611 E. 6th Street, Austin, Texas. If necessary, the public hearing will be continued at 9:00 a.m. on January 19, 2007. Comments must be received within 30 days after publication of the proposed amendments in the Texas Register in order to be considered.

The amendments are proposed under Occupations Code §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The amendments implement Occupations Code, Chapter 2001.

§402.400. General Licensing Provisions.

(a) - (q) (No change.)

(r) Eligibility determination pending identification of playing location, days, times, and starting date.

(1) An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

(2) All other information requested on the application and the accompanying schedules must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) An organization requesting a determination of eligibility status must submit with its application $100 to be applied towards the organization's license fee.

(4) Upon a determination that the requirements in paragraphs (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.

(5) Within 180 days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the information to the Commission within 180 days, the Commission will proceed with denial of the application.

(6) After review of the applicant's submitted intended playing location, days, times, and starting date, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days, times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 14 calendar days of receipt of the organization's intended playing location, days, times, and starting date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Lottery Commission
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SUBCHAPTER F. PAYMENT OF TAXES, PRIZE FEES AND BONDS

16 TAC §402.603

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Lottery Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 402, §402.603 (relating to Bonds or Other Security). The repeal is necessary because the Commission is currently drafting a proposed new rule relating to bonds or other security which will be filed at a later date. The Commission intends to adopt the repeal concurrently with the adoption of a new rule relating to bonds or other security.

Kathy Pyka, Controller, has determined that, for the first five-year period the repeal is in effect, there will be no significant fiscal implications for state or local government as a result of the repeal. Any costs to the State could be absorbed by current resources. Additionally, there will be no significant effect on small businesses, micro businesses, or local or state employment as a result of implementing the new sections.

Comments on the proposed repeal may be submitted to Sandy Joseph, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630. Comments may also be submitted online at www.txlottery.org. The Commission will hold a public hearing on this proposal at 9:00 a.m. on January 18, 2007, at 611 E. 6th Street, Austin, Texas. If necessary, the public hearing will be continued at 9:00 a.m. on January 19, 2007. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Occupations Code, §2001.054 which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act.

The repeal affects Occupations Code, Chapter 2001.

§402.603. Bonds or Other Security.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 13, 2006.

TRD-200606658
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.144, §1.145

The Texas Board of Architectural Examiners proposes an amendment to §1.144 and §1.145 of Chapter 1, Subchapter H, Title 22, pertaining to professional conduct. The proposed amendment to §1.144 deletes a requirement that certain architectural advertisements display an architect's registration number. The requirement applies only to advertising that appears in a telephone directory, email directory, web site, or newspaper. There does not appear to be any great benefit to the public health, safety, and welfare to impose this requirement on these forms of advertising. Section 1.144 is further amended to prohibit architects from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an architect to render publicly funded architectural work. Section 1.144 is also amended to specify that an architect is subject to discipline for knowingly giving false testimony or receiving payment to render a particular opinion when serving as an expert witness. The amendment sets standards arising out of the conduct, but not a reasonable good faith opinion, of the architect acting as an expert witness. The proposed amendments to §1.145 require an architect to promptly notify a prospective client or employer of any business association or financial interest of the architect which might reasonably appear to affect the architect's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires architects to disclose potential conflicts of interest with current, not potential, clients or employers. The proposed amendments also delete a requirement that the architect either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The proposed amendments also modify a prohibition upon architects soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the architect is performing or has contracted to perform architecture services. As amended the prohibition would allow the architect to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The reason for the proposed amendments is to bar architects from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The reason for the amendments to the conflict of interest prohibitions is to allow an architect to maintain a contractual or employment relationship with a client or employer after disclosing an actual or potential conflict of interest. Currently, the burden is on the architect to remove the conflict of interest unless the client or employer consents to it in writing. A client or employer who has no objection to the conflict of interest may fail to state that fact in writing or may delay in issuing a written statement to that effect. Under the circumstances, an architect may risk disciplinary action by the Board due in part to the failure to act on the part of the client or employer. Pursuant to the proposed amendments, the contractual or employment relationship will continue unless the client or employer objects. Finally, the proposed amendments also allow an architect to receive consideration and other benefits from suppliers, contractors, and consultants on a project so long as the circumstances of the transaction are fully disclosed to all parties. The effect of the amendment is to allow an architect to continue work on a project despite a potential conflict of interest so long as no interested party objects. The reason for the amendment is to make the section flexible to allow for an exchange of services and consideration between people working on a project so long as no interested party is damaged or objects to those exchanges.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Since serving as an expert witness is within the statutory definition of the practice of architecture and therefore within the jurisdiction of the agency, the agency may currently receive complaints arising from an architect's testimony as an expert witness. It is not anticipated that the proposed rule will have any effect on the number of complaints received, investigated, and prosecuted.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: the elimination of a requirement to publish registration numbers in some but not all advertising which appears to have little public benefit and is often overlooked by registrants. The prohibition upon providing free goods and services as an inducement to be retained on public projects will benefit the public by encouraging selection of design services on the basis of competence and qualification instead of selection on the basis of the goods and services rendered during the selection process. The public will benefit by establishing standards for architects to render objective, truthful testimony as an expert which standards are not unduly burdensome so that architects are deterred from serving as expert witnesses.

The proposed revisions to the requirements relating to conflicts of interests will benefit the public by eliminating a mandate requiring an architect to terminate a conflict of interest unless her or his client or employer affirmatively consents to it. The mandate may be disruptive to projects and may result in delay, increased costs and potentially inferior designs if the architect opts to terminate the conflict by foregoing work on the project. The impact of the prohibition upon giving goods and services to governmental entities pursuant to a request for proposals or a request for qualifications would likely be a positive impact upon small businesses which would likely be less able than larger firms to render gratuitous goods and services as an inducement to be retained on a public project.

There will be no cost to individuals required to comply with the rules resulting from the amendments. Generally, the proposed amendments make the rules more lenient, resulting in a probable indeterminable cost savings to individuals required to comply with them.

There will be no adverse impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to §1051.001(7)(F), Texas Occupations Code Annotated, which defines the term "practice of architecture" to include providing expert testimony for purposes of Chapter 1051, Texas Occupations Code Annotated, relating to the regulation of architecture; §1051.208, Texas

Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants; §1051.752(6), Texas Occupations Code Annotated, which specifies that an architect is subject to disciplinary action for dishonest practices in the practice of architecture; and §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

The proposed amendments do not affect any other statutes.

§1.144. Dishonest Practice.

(a) An Architect may not directly or indirectly perform an act, omit an act or allow an omission, make an assertion, or otherwise engage in a practice with the intent to:

(1) defraud,

(2) deceive, or

(3) create a misleading impression.

(b) An Architect may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the service of an Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Architect's Texas architectural registration number. If an advertisement is for a business that employs more than one Architect, only the Texas architectural registration number for one Architect employed by the firm or associated with the firm pursuant to section 1.122 is required to be displayed.~~]

(c) An Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded architectural work. An Architect may not give architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Architect to render publicly funded architectural work.

(d) An Architect serving as an expert witness is subject to discipline for committing a dishonest practice upon a finding by a court of law that the Architect:

(1) rendered testimony the Architect has actual knowledge is false; or

(2) agreed to receive payment contingent upon giving testimony that expresses a particular opinion.

§1.145. Conflicts of Interest.

(a) If an Architect has any business association or financial interest which might reasonably appear to influence the Architect's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Architect's current or prospective client or employer, the Architect shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. [~~Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Architect shall either terminate the business association or financial interest or forego the project or employment.~~]

(b) An Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature, financial or otherwise, from more than one party in connection with a single project or assignment unless the circumstances are fully disclosed in writing to all parties.

(c) An Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Architect is performing or has contracted to perform architectural services unless the circumstances are fully disclosed in writing to all parties.

(d) The phrase "benefit of any substantial nature" is defined to mean any act, article, money, or other material consideration which is of such value or proportion that its acceptance creates an obligation or the appearance of an obligation on the part of the Architect or otherwise could adversely affect the Architect's ability to exercise his/her own judgment without regard to such benefit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606774
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-8544

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SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §1.210

The Texas Board of Architectural Examiners proposes new §1.210 of Chapter 1, Subchapter K, Title 22, pertaining to architectural practice. The proposed new §1.210, relating to architectural plans and specifications, defines the term "architectural plans and specifications" as that term is used in §§1051.551, 1051.606, and 1051.703, Texas Occupations Code Annotated, which provide, respectively: that building officials may accept architectural plans and specifications for permitting only if they bear the seal of an architect; the architectural plans and specifications for certain projects may be prepared by one who is not an architect so long as that person does not use a form of the title "architect"; and that an architect must prepare the architectural plans and specifications for institutional residential facilities and certain buildings owned by the state or a political subdivision of the state if the building is to be used for education, office occupancy, or assembly. The section also describes certain architectural plans and specifications that may also coincidently be engineering plans and specifications prepared by a licensed professional engineer due to the education, training, and experience of engineers. Finally, the section would specify that it does not address the services rendered by landscape architects or interior designers. The effect of the section is to clarify what designs are architectural plans and specifications in order to implement the referenced statutes.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the proposed new rule is in effect, a significant fiscal impact resulting from the proposed rule is not anticipated. The section

would provide clearer direction for design professionals, building officials, and governmental entities in administering and adhering to preexisting law. The section is not anticipated to increase the cost of enforcing or administering those laws. Under current laws, state and local government are required to retain an architect to prepare architectural plans and specifications for buildings described in §1051.703, Texas Occupations Code Annotated. The section will give greater direction in fulfilling that requirement and therefore will not result in cost to state or local government. Any cost in adhering to the statutory mandate results from the statute--not the proposed section.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the new rule is in effect the public benefits expected as a result of the rule are as follows: The proposed new rule will benefit the public by providing clear direction regarding services or work that are referenced under the laws as architectural plans and specifications. The proposed rule will ensure that a person does not unwittingly engage in the unlawful practice of architecture. It also gives clear guidance to persons who are not registered as architects who may prepare "architectural plans and specifications" on a project made exempt from the Board's jurisdiction under §1051.606, Texas Occupations Code. Without clarification of the term, a person might engage in conduct made unlawful by another law because he or she would not know the scope of the exemption which allows for the preparation of architectural plans and specifications. Finally, the proposed rule would benefit the public by ensuring that a project which requires the services of an architect will receive a building permit only if an architect renders those architectural services which would secure the health, safety, and welfare of the public. The amendment implements pre-existing statutory provisions which are addressed primarily to governmental entities--not individuals or businesses. Therefore, the rule will have no impact on small or micro-businesses. A business or individual that prepares architectural plans and specifications pursuant to an exemption under §1051.606, Texas Occupations Code Annotated, may continue to do so. The rule merely clarifies which plans those individuals are permitted to prepare and generally tracks current practices in the custom of the design professions. An individual or business who is not registered as an architect who prepares architectural plans and specifications for a project that is not exempt from Chapter 1051 would not incur an adverse economic impact resulting from the rule because those individuals are currently prohibited from preparing architectural plans and specifications under those circumstances. The rule would clarify and implement laws currently in effect. Any cost would be attributable to current law and not the rule clarifying it.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to §1051.001(7), Texas Occupations Code Annotated, which defines the term "practice of architecture"; §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Architects' Registration Law; §1051.701, Texas Occupations Code Annotated, which requires a person to be registered as an architect to engage in the practice of architecture; and §1051.801(a), Texas Occupations Code Annotated, which prohibits one who is not registered as an architect from engaging in, or offering or attempting to engage in, the practice of architecture.

The proposed new rule does not affect any other statutes.

§1.210. Architectural Plans and Specifications.

(a) Architectural education, training and experience as described in §1.21 and §1.191 of this title are necessary prerequisites to the preparation of architectural plans and specifications for the construction, enlargement, or alteration of a building intended for human use and occupancy. Generally, architectural plans and specifications are instructions that integrate and coordinate the design of all building systems and related site components necessary for constructing a building and its environs intended for human use and occupancy. Architectural plans and specifications detail the form, function, construction, habitability, and appearance of the building and the manner in which humans enter, exit, circulate, and use the interior space of the building and its external environs. It is the role of the Architect to coordinate with consultants in the design of a building intended for human use and occupancy in order to integrate all components and systems of the building and its environs.

(b) For purposes of §§1051.551, 1051.606, and 1051.703 of the Texas Occupations Code, the term "architectural plans or specifications" means a Construction Document that depicts in detail the design of the spatial relationships and the quality of materials and systems required for the construction of a building and its environs. The term includes:

(1) Site plans depicting the design of the location and orientation of the building and related elements such as vehicular or pedestrian circulation paths, parking, and surface drainage on the site based upon a determination of the interrelationship of the intended use with the environment, topography, vegetation, climate, geographic aspects, legal aspects of site development, including setback requirements, zoning and other legal restrictions;

(2) Floor plans and details depicting the design of internal and external walls, wall sections, the design of the internal spaces of the building, and the design of vertical circulation systems including accessibility ramps, stair systems, elevators and escalators, which plans implement programming, regulatory, and accessibility requirements;

(3) Cross sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing or structural systems;

(4) Roof plans and details depicting the design of roof system materials, components, drainage, slopes, directions, and location of roof accessories and equipment not involving structural engineering calculations;

(5) The design of details of components and assemblies specifically including any part of a building exposed to water infiltration or fire-spread considerations;

(6) Reflected ceiling plans and details depicting the design of the location, materials, and connections of the ceiling to the structure and the integration of the ceiling with electrical, mechanical, lighting, sprinkler and other building systems;

(7) Finish plans or schedules depicting surface materials on the interior and exterior of the building;

(8) Interior and exterior elevations depicting the design of materials, locations and relationships of components and surfaces;

(9) Partition, door, window, lighting, hardware and fixture schedules;

(10) Shop drawings by manufacturers, fabricators of materials and products, or contractors to be used in the components of the

building designed by the Architect, when such drawings are required by the Construction Documents;

(11) Specifications listing the nature, quality, and execution of materials for construction of the elements of the building depicted in the plans prepared by the Architect; and

(12) Life safety plans and sheets with code analyses.

(c) Notwithstanding the thresholds within Chapters 1001 and 1051, Texas Occupations Code, the plans and specifications may be prepared by a person who is registered as an Architect or licensed as a professional engineer in the State of Texas:

(1) Site plans depicting the location and orientation of the building on the site based upon a determination of the interrelationship of the intended use with the environment, topography, vegetation, climate, geographic aspects, and the legal aspects of site development, including setback requirements, zoning and other legal restrictions;

(2) The depiction of the building systems such as structural, mechanical, electrical, and plumbing systems;

(3) Cross sections depicting building components from a hypothetical cut line through a building;

(4) Details of components and assemblies specifically including any part of a building exposed to water infiltration or fire-spread considerations;

(5) Life safety plans and sheets with code analyses; and

(6) Plans for a building that is not intended for human use or occupancy.

(d) Section 1.210 does not address the services or work that may otherwise be offered or rendered by Interior Designers or Landscape Architects.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606775
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-8544

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.144, §3.145

The Texas Board of Architectural Examiners proposes an amendment to §3.144 and §3.145 of Chapter 3, Subchapter H, Title 22, pertaining to professional conduct. The proposed amendment to 3.144 repeals a requirement that certain landscape architecture advertisements display an landscape architect's registration number. The requirement applies only to advertising that appears in a telephone directory, email directory, web site, or newspaper. There does not appear to be any great benefit to the public health, safety, and welfare to impose this requirement on these forms of advertising. Section 3.144 is further amended to prohibit landscape architects from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an landscape architect to render publicly funded landscape architecture work.

The proposed amendments to §3.145 requires a landscape architect to promptly notify a prospective client or employer of any business association or financial interest of the landscape architect which might reasonably appear to affect the landscape architect's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires landscape architects to disclose potential conflicts of interest with current, not potential, clients or employers. The proposed amendments also repeal a requirement that the landscape architect either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The proposed amendments also modify a prohibition upon landscape architects soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the landscape architect is performing or has contracted to perform landscape architecture services. As amended the prohibition would allow the landscape architect to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The reason for the proposed amendments is to bar landscape architects from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The reason for the amendments to the conflict of interest prohibitions is to allow a landscape architect to maintain a contractual or employment relationship with a client or employer after disclosing an actual or potential conflict of interest. Currently, the burden is on the landscape architect to remove the conflict of interest unless the client or employer consents to it in writing. A client or employer who has no objection to the conflict of interest may fail to state that fact in writing or may delay in issuing a written statement to that effect. Under the circumstances, a landscape architect may risk disciplinary action by the Board due in part to the failure to act on the part of the client or employer. Pursuant to the proposed amendments, the contractual or employment relationship will continue unless the client or employer objects. Finally, the proposed amendments also allow a landscape architect to receive consideration and other benefits from suppliers, contractors, and consultants on a project so long as the circumstances of the transaction are fully disclosed to all parties. The effect of the amendment is to allow a landscape architect to continue work on a project despite a potential conflict of interest so long as no interested party objects. The reason for the amendment is to make the section flexible to allow for an exchange of services and consideration between people working on a project so long as no interested party is damaged or objects to those exchanges.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. It is not anticipated that the proposed

rule will have any effect on the number of complaints received, investigated, and prosecuted.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: the elimination of a requirement to advertise registration numbers in some but not all advertising that appears to have little public benefit and is often overlooked by registrants. The prohibition upon providing free goods and services as an inducement to be retained on public projects will benefit the public by encouraging selection of design services on the basis of competence and qualification instead of selection on the basis of the goods and services rendered during the selection process. The proposed revisions to the requirements relating to conflicts of interests will benefit the public by eliminating a mandate requiring a landscape architect to terminate a conflict of interest unless her or his client or employer affirmatively consents to it. The mandate may be disruptive to projects and may result in delay, increased costs and potentially inferior designs if the landscape architect opts to terminate the conflict by foregoing work on the project. The impact of the prohibition upon giving goods and services to governmental entities pursuant to a request for proposals or a request for qualifications would likely be a positive impact upon small businesses which would likely be less able than larger firms to render gratuitous goods and services as an inducement to be retained on a public project.

There will be no cost to individuals required to comply with the rule resulting from the amendment. Generally, the proposed amendments make the rules more lenient, resulting in a probable indeterminable cost savings to individuals required to comply with them.

There will be no adverse impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities and §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants. The proposed amendment does not affect any other statutes.

§3.144. Dishonest Practice.

(a) (No change.)

(b) A Landscape Architect may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the service of a Landscape Architect in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Landscape Architect's Texas landscape architectural registration number. If an advertisement is for a business that employs more than one Landscape Architect, only the Texas landscape architectural registration number for one Landscape Architect employed by the firm or associated with the firm pursuant to section 3.122 is required to be displayed.~~]

(c) A Landscape Architect may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded landscape architectural work. A Landscape Architect may not give landscape architectural plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select a Landscape Architect to render publicly funded landscape architectural work.

§3.145. Conflicts of Interest.

(a) If a Landscape Architect has any business association or financial interest which might reasonably appear to influence the Landscape Architect's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Landscape Architect's current or prospective client or employer, the Landscape Architect shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. [~~Unless the client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Landscape Architect shall either terminate the business association or financial interest or forego the project or employment.~~]

(b) (No change.)

(c) A Landscape Architect shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Landscape Architect is performing or has contracted to perform landscape architectural services unless the circumstances are fully disclosed in writing to all parties.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606776
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-8544

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.154, §5.155

The Texas Board of Architectural Examiners proposes amendments to §5.154 and §5.155 of Chapter 5, Subchapter H, Title 22, pertaining to professional conduct. The proposed amendment to §5.154 repeals a requirement that certain interior design advertisements display an interior designer's registration number. The requirement applies only to advertising that appears in a telephone directory, email directory, web site, or newspaper. There does not appear to be any great benefit to the public health, safety, and welfare to impose this requirement on these forms of advertising. Section 5.154 is further amended to prohibit interior designers from giving plans, design services, or other goods and services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an interior designer to render publicly funded interior design work. The proposed amendments to §5.155 re-

quires an interior designer to promptly notify a prospective client or employer of any business association or financial interest of the interior designer which might reasonably appear to affect the interior designer's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires interior designers to disclose potential conflicts of interest with current, not potential, clients or employers. The proposed amendments also repeal a requirement that the interior designer either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The proposed amendments also modify a prohibition upon interior designers soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the interior designer is performing or has contracted to perform interior design services. As amended the prohibition would allow the interior designer to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The reason for the proposed amendments is to bar interior designers from seeking to be selected to render public work on the basis of the amount or the extent of goods and services granted to governmental entities. The prohibition upon rendering gratuitous goods and services during the procurement process is intended to secure the selection of design professionals upon qualifications and merit. The reason for the amendments to the conflict of interest prohibitions is to allow an interior designer to maintain a contractual or employment relationship with a client or employer after disclosing an actual or potential conflict of interest. Currently, the burden is on the interior designer to remove the conflict of interest unless the client or employer consents to it in writing. A client or employer who has no objection to the conflict of interest may fail to state that fact in writing or may delay in issuing a written statement to that effect. Under the circumstances, an interior designer may risk disciplinary action by the Board due in part to the failure to act on the part of the client or employer. Pursuant to the proposed amendments, the contractual or employment relationship will continue unless the client or employer objects. Finally, the proposed amendments also allow an interior designer to receive consideration and other benefits from suppliers, contractors, and consultants on a project so long as the circumstances of the transaction are fully disclosed to all parties. The effect of the amendment is to allow an interior designer to continue work on a project despite a potential conflict of interest so long as no interested party objects. The reason for the amendment is to make the section flexible to allow for an exchange of services and consideration between people working on a project so long as no interested party is damaged or objects to those exchanges.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. It is not anticipated that the proposed rule will have any effect on the number of complaints received, investigated, and prosecuted.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amended rules are as follows: the elimination of a requirement to advertise registration numbers in some but not all advertising that appears to have little public benefit and is often overlooked by registrants. The prohibition upon providing free goods and services as an inducement to be retained on public projects will benefit the public by encouraging selection of design services on the basis of competence and qualification instead of selection on the basis of the goods and services rendered during the selection process. The proposed revisions to the requirements relating to conflicts of interests will benefit the public by eliminating a mandate requiring an interior designer to terminate a conflict of interest unless her or his client or employer affirmatively consents to it. The mandate may be disruptive to projects and may result in delay, increased costs and potentially inferior designs if the interior designer opts to terminate the conflict by foregoing work on the project. The impact of the prohibition upon giving goods and services to governmental entities pursuant to a request for proposals or a request for qualifications would likely be a positive impact upon small businesses which would likely be less able than larger firms to render gratuitous goods and services as an inducement to be retained on a public project. There will be no cost to individuals required to comply with the rule resulting from the amendment. Generally, the proposed amendments make the rules more lenient, resulting in a probable indeterminable cost savings to individuals required to comply with them. There will be no adverse impact on small businesses.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The amendments are proposed pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities and §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants.

The proposed amendment does not affect any other statutes.

§5.154. Dishonest Practice.

(a) (No change.)

(b) An Interior Designer may not advertise in a manner which is false, misleading, or deceptive. [~~Each advertisement that offers the services of an Interior Designer in Texas and is found in a telephone directory, e-mail directory, web site, or newspaper must clearly display that Interior Designer's Texas interior design registration number. If an advertisement is for a business that employs more than one Interior Designer, only the Texas interior design registration number for one Interior Designer employed by the firm or associated with the firm pursuant to §5.132 is required to be displayed.~~]

(c) An Interior Designer may not directly or indirectly solicit, offer, give, or receive anything or any service of significant value as an inducement or reward to secure any specific publicly funded interior design work. An Interior Designer may not give Interior Design plans, design services, pre-bond referendum services, or any other goods or services to a governmental entity in response to a request for qualifications, a request for proposals, or otherwise during the process to select an Interior Designer to render publicly funded interior design work.

§5.155. Conflicts of Interest.

(a) If an Interior Designer has any business association or financial interest which might reasonably appear to influence the Interior Designer's judgment in connection with the performance of a professional service and thereby jeopardize an interest of the Interior Designer's current or prospective client or employer, the Interior Designer shall promptly inform the client or employer in writing of the circumstances of the business association or financial interest. [~~Unless the~~

~~client or employer provides written consent after full disclosure regarding the circumstances of the business association or financial interest, the Interior Designer shall either terminate the business association or financial interest or forego the project or employment.~~]

(b) (No change.)

(c) An Interior Designer shall not solicit or accept, directly or indirectly, any financial or other valuable consideration, material favor, or other benefit of any substantial nature from any supplier of materials or equipment or from any contractor or any consultant in connection with any project on which the Interior Designer is performing or has contracted to perform interior design services unless the circumstances are fully disclosed in writing to all parties.

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606777
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-8544

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.15

The Texas Medical Board proposes new §172.15, concerning Public Health License.

New §172.15 provides a new limited license for the practice of public law medicine.

Michele Shackelford, General Counsel, Texas Medical Board, has determined that for the first five-year period the new section is in effect there will be no fiscal implications to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the section as proposed.

Ms. Shackelford also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to allow applicants for licenses to obtain a limited license in cases in which the applicant does not intend to practice clinical medicine, allowing the Board to regulate those who practice public law medicine without allowing them to practice clinical medicine. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Sally Durocher, P.O. Box 2018, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The new rule is proposed under the authority of the Texas Occupations Code Annotated, §153.001 and §155.009, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

Section 155.009, Texas Occupations Code Annotated is affected by this proposal.

§172.15. Public Health License.

(a) The board may issue a license that is limited to public health medicine to an applicant pursuant to the authority of §155.009, Tex. Occ. Code, authorizing the board to issue a limited license for the practice of administrative medicine.

(b) "Public health medicine," as used in this section, means professional managerial, administrative, or supervisory activities related to public health or the practice of medicine on behalf of and as defined by a governmental entity serving as a public health agency or institution, including prescriptive authority for public health purposes, preventive interventions, diagnosis and treatment of communicable and vaccine preventable diseases, pharmacological interventions for smoking cessation and contraception, and other clinical preventive medicine interventions such as those to prevent obesity and diabetes.

(c) An applicant for a public health license must complete the same application and meet the same requirements as an applicant for a full Texas medical license, except:

(1) the applicant for a public health license shall not be required to show that the applicant has been engaged in the active practice of medicine, as defined in §163.11 of this title (relating to Active Practice of Medicine);

(2) the applicant must be employed by or under contract with a governmental entity serving as a public health agency or institution; and

(3) the application shall be endorsed by a physician affiliated with the governmental entity or the Texas Department of State Health Services. An endorsement must include a certificate by the endorsing physician that the applicant is of good professional character and qualified to perform public health services as defined by the governmental entity.

(d) The holder of a public health license shall be required to pay the same fees and meet all other requirements for issuance and renewal of the license as a person holding a full license to practice medicine.

(e) The public health license holder's practice of medicine shall be limited to activities on behalf of a governmental entity serving as a public health agency or institution and duties and responsibilities assigned by the governmental entity to the public health license holder. The holder of a public health license may, however, be an employee or under contract with governmental entities other than or in addition to the governmental entity named in license holder's original application for a public health license.

(f) The holder of a public health license shall be subject to the Medical Practice Act and the Rules of the board as a person holding a full license to practice medicine. A physician is engaged in the practice of medicine when the physician uses medical training and experience to make a medical decision.

(g) This section shall have no effect on any full Texas medical license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606686
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.16

The Texas Funeral Service Commission (commission) proposes an amendment to Title 22, §201.16, concerning Memorandum of Understanding with the Texas Department of Health.

The amendment is proposed to change the name of the title of the rule due to the change in name of the Texas Department of Health to the Texas Department of State Health Services (department).

O. C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that, for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of the amendment will be to remain consistent with the department's name change. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§201.16. Memorandum of Understanding with the Texas Department of State Health Services.

(a) Purpose. The purpose of this section is to implement Texas Civil Statutes, Article 4582b, now codified as Texas Occupations Code, Chapter 651, 76th Legislature, 1999, and Health [~~health~~] and Safety Code, Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws of the Texas Department of State Health Services (Department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) (No change.)

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Texas Department of State Health Services or the Texas Funeral Service Commission.

(2) Death record--A report of death, death certificate, or a burial-transit permit, and such other forms as the Texas Department of State Health Services [~~Department of the Texas Board of Health~~] determine to be necessary.

(3) Department--The Texas Department of State Health Services or any local registrar.

(4) - (8) (No change.)

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606660
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-2466

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.30

The Texas Funeral Service Commission (commission) proposes an amendment to Title 22, §203.30, concerning Continuing Education.

The amendment is proposed in order to ensure continuing education offered by an approved provider is open to all licensees and to clarify the credit hour eligibility regarding required hours.

O. C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that, for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be clarifying the maximum number of hours granted by the commission for each required continuing education course and to ensure all continuing education courses approved are open to all licensees. There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.30. Continuing Education.

(a) (No change.)

(b) Definitions: The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Approved program--A continuing education program activity that has been approved by the commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) (No change.)

(c) Types of Acceptable Continuing Education: Acceptable sources of continuing education are institutes, seminars, workshops, conferences, independent study programs, college academic or continuing education courses which are related to or enhance the practice of funeral directing or embalming and are offered or sponsored by an approved provider and open to all licensees.

(d) - (f) (No change.)

(g) Credit Hour Eligibility. The commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) - (3) (No change.)

(4) All required hours may be obtained through independent study, including home study or Internet presentation with a maximum of 3 hours credit per course.

(5) - (8) (No change.)

(h) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606662
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-2466

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22 TAC §203.38

The Texas Funeral Service Commission (commission) proposes a new rule to Title 22, §203.38, relating to reinstatement of funeral director and/or embalmer licenses.

The new rule is proposed to prohibit persons whose funeral director's and/or embalmer's license has been revoked or cancelled through disciplinary action by the commission from petitioning the commission for reinstatement for five years, unless another time period is provided for in a board order. It establishes guidelines for considering petitions.

O. C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the section is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed rule.

Mr. Robbins also has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the new rule will be to ensure that licensees have adequate time for rehabilitation prior to petitioning the commission for reinstatement in order that the public might be protected from unethical/unlawful funeral directors and/or embalmers. There will be no effect on large, small or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The new rule is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the proposal.

§203.38. Reinstatement of Funeral Director and/or Embalmer Licenses.

(a) A person whose license to practice funeral directing and/or embalming has been cancelled or revoked, whether by voluntary action or by disciplinary action of a civil court, commission or board, may after five (5) years from the effective date of such cancellation or revocation, petition the Board for reinstatement of the license, unless another time is provided in the cancellation or revocation order, or unless no provision was made in the order for reinstatement. This rule does not apply to licensees who let their licenses lapse for non-payment of renewal fees or licensees against whom a cancellation or revocation proceeding is not pending before the Commission or Board or in any other jurisdiction.

(b) The petition shall be in writing and in the form prescribed by the Commission or Board.

(c) The Commission or Board may grant or deny the petition. If the petition is denied by the Commission or Board, a subsequent petition may not be considered by the Commission or Board until twelve (12) months have lapsed from the date of denial of the previous petition.

(d) The petitioner or his legal representative shall appear before the Commission or Board to present the request for reinstatement of the license.

(e) The petitioner shall have the burden of showing good cause why the license should be reinstated.

(f) In considering a petition for reinstatement, the Commission or Board may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to his family;

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming

(5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;

(6) offers of employment as a funeral director and/or embalmer

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Commission or Board order revoking or canceling the petitioner's license;

(9) compliance with provisions of the Funeral Directing and/or Embalming Act regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies

(11) any physical, chemical, emotional, or mental impairment.

(g) In considering a petition, the Commission or Board may also consider:

(1) the gravity of the offense for which the petitioner's license was cancelled, revoked, restricted or surrendered and the impact the offense had upon the public health, safety, and welfare;

(2) the length of time since the petitioner's license was cancelled, revoked, or restricted, as a factor in determining whether the time period has been sufficient for the petitioner to have rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;

(3) whether the license was submitted voluntarily for cancellation at the request of the licensee; and

(4) other rehabilitative actions taken by the petitioner.

(h) If the Commission or Board grants the petition for reinstatement, the petitioner must successfully complete the Texas State Mortuary Law Exam during the regularly scheduled examination times. The Commission or Board may also require the petitioner to complete additional testing and training to assure the petitioner's competency to practice funeral directing and/or embalming.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606667
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 936-2466

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.3

The Texas Board of Physical Therapy Examiners proposes amendments to §341.3, concerning Qualifying Continuing Education. The amendment would add a CE category for residencies, fellowships and examinations.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be more opportunities for licensees to pursue continuing competency in the profession. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§341.3. Qualifying Continuing Education.

(a) - (c) (No change.)

(d) Self-directed study.

(1) - (2) (No change.)

(3) Residencies, Fellowships, and Examinations.

(A) The successful completion of a specialty examination may be submitted for consideration for the CE requirement. A list of the specialty examinations that qualify for CE will be maintained by the board.

(B) The successful completion of an American Physical Therapy Association credentialed residency or fellowship program may be submitted for consideration for the CE requirement.

(C) The successful completion of an examination of the Federation of State Boards of Physical Therapy pertaining to continued competence may be submitted for consideration for the CE requirement excluding any examination for initial licensure or examination required as a part of a disciplinary action.

(D) Maximum CEU values for Residencies, Fellowships, and Examinations shall be as follows but shall not meet the Ethics CEU requirement for license renewal:

(i) Successful completion of a specialty examination shall be worth up to 3.0 CEUs.

(ii) Successful completion of an American Physical Therapy Association credentialed residency or fellowship program shall be worth up to 3.0 CEUs.

(iii) Successful completion of an examination of the Federation of State Boards of Physical Therapy pertaining to continued competence shall be worth up to 1.5 CEUs.

(E) The licensee should submit the request to the board-approved organization with explanation and evidence designated by the Board to verify successful completion of the residency, fellowship, or examination.

(4) [~~(3)~~] Documentation for self-study CE must include supporting evidence for application to the board-approved organization and the resulting approval letter. If selected for audit, the licensee must submit the specified documentation.

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2006.

TRD-200606623
John P. Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-6900

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CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners proposes amendments to §346.1, concerning Educational Settings. The amendments would change the requirements for evaluation and reevaluation in this setting. Specifically, those activities would be performed in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, rather than as described in §322.1(b) of the Board's rules.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated is increased access to physical therapy services for children being served under the IDEA. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§346.1. Educational Settings.

(a) - (d) (No change.)

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part B of the Individuals with Disabilities Education Act (IDEA), 20 USC §1414, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Education Program) must be reviewed by the PT every 30 days to determine if revisions are necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2006.

TRD-200606625
John P. Maline
Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 305-6900

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22 TAC §346.3

The Texas Board of Physical Therapy Examiners proposes amendments to §346.3, concerning Early Childhood (ECI) Setting. The amendments would change the requirements for evaluation and reevaluation in this setting. Specifically, those activities would be performed in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §1436, rather than as described in §322.1(b) of the Board's rules.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated is increased access to physical therapy services for children being served under the IDEA. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§346.3. Early Childhood (ECI) Setting.

(a) - (d) (No change.)

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §1436, or when warranted by a change in the child's condition, and include on-site reexamination of the child. The Plan of Care (Individual Family Service Plan) must be reviewed by the PT every 30 days to determine if revisions are necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2006.

TRD-200606624

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: January 28, 2007

For further information, please call: (512) 305-6900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER D. GENERAL

25 TAC §289.204

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §289.204, concerning radiation control fees, specifically mammography certification and accreditation fees.

BACKGROUND AND PURPOSE

The amendment to §289.204 is necessary because the department is applying to the United States Food and Drug Administration (FDA) to become a certifying body for mammography facilities. Currently, the department has a contract with the FDA for the department to perform inspections and the FDA bills individual facilities for the cost of those inspections. When the department becomes a certifying body, the contract with the FDA will not be extended and fees for performing inspections as well as fees for the certification process will be incorporated into one certification fee paid to the department by each facility. In addition, the department has fees for mammography accreditation. Increases to the mammography accreditation fees reflect increases to costs charged to the department for services provided by the American College of Radiology (ACR). The department contracts with the ACR to provide quality assurance reviews of mammography films for accreditation. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also included in the evaluation to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

In §289.204(b)(1)(C), the amendment changes references to §289.230 (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography) to state the correct title of the rule being cited, and adds reference to §289.234 (relating to Mammography Accreditation) to appropriately reflect a new rule section. Amendments to §289.204(g) clarify the subsection title and add language stating that no application will be accepted for filing or processed prior to payment of the full amount specified. Section 289.204(g)(1) reflects changes in the fees charged to a facility for certification. Currently a facility pays a $422 certification fee to the department and a $1,749 inspection fee to the FDA for a total of $2,171. When the department becomes a certifying body, fees for performing inspections as well as fees for the certification process will be incorporated into one certification fee of $1,745 paid to the department by each facility. Certifications with more than one machine (system) on the same certification will be charged an additional $204 for each additional machine. Section 289.204(g)(2) changes the annual fee to $1,745 with an additional charge of $204 for each additional machine on the certification.

Language is added to §289.204(g)(3)(A) to clarify that the fee for mammography machines used for interventional breast radiography is $422. Certifications with more than one interventional breast radiography machine on the same certification will be charged an additional $204 for each additional machine. In §289.204(g)(3)(B), the annual fee for mammography machines used for interventional breast radiography is $422 with an additional $204 charged for each additional machine on the certification.

In §289.204(h)(2)(A) - (B), the cost of quality assurance reviews of mammography films by the ACR is increasing. The accreditation fee will increase from $880 to $980 for the first machine. The fee for each additional machine will increase from $490 to $585. Other fees charged by the ACR are also increasing. In §289.204(h)(2)(C), the fee for re-evaluation of clinical images is changing from $270 to $305. In §289.204(h)(2)(D), the fee for phantom image review is increasing from $210 to $340. The fee for reinstatement of mammography machines in §289.204(h)(2)(F) is changing from $610 to $585. Section §289.204(h)(2)(G) reflects a $5 increase in the amount for processing thermolumenescent dosimeters.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each calendar year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of $0 the first calendar year and $675,262 each year for calendar years two through five due to the increase in certification and accreditation fees. The additional revenue will offset the increased costs associated with assuming the costs of mammography inspections formerly performed under contract with the FDA at a cost of $530,440, and the legislative increase in pay, longevity pay, and travel reimbursement.

Presently, a facility pays a $422 certification fee to the department and a $1,749 inspection fee to the FDA for a total of $2,171.

When the department becomes a certifying body, the contract with the FDA will not be extended and fees for performing inspections as well as fees for the certification process will be incorporated into one certification fee paid to the department by each facility. This fee is $1,745. In addition, the FDA will charge each facility a $509 overhead fee for maintaining the national support structure. The total of both fees will be $2,254 for an increase of $83 or 3.8% to each facility for certification.

For facilities accredited with the department, fees charged to the department for quality assurance reviews of mammography films for accreditation by the ACR are increasing. The accreditation fee will increase from $880 to $980 for the first machine. The fee for each additional machine will increase from $490 to $585. The fees for other accreditation services will increase by a range of 11% to 59%.

State and local government entities that are registered with the department for possession of mammography radiation machines will be required to pay the increased certification fee as specified in the rule. All facilities in Texas and state and local government entities have a choice of accrediting with the department or with the ACR.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed. There will be an increase in the certification fees for businesses or persons required to maintain a mammography certification from $422 to $1,745 per year. Presently, a facility pays a $422 certification fee to the department and a $1,749 inspection fee to the FDA for a total of $2,171. When the department becomes a certifying body, the contract with the FDA will not be extended and fees for performing inspections as well as fees for the certification process will be incorporated into one certification fee paid to the department by each facility. This fee is $1,745. In addition, the FDA will charge each facility a $509 overhead fee for maintaining the national support structure. The total of both fees will be $2,254 for an increase of $83 or 3.8% to each facility for certification. There will be an increase in the accreditation fees for businesses or persons who choose mammography accreditation with the department. The current accreditation fee of $880 for the first machine will be increased to $980. The fee for each additional machine will increase from $490 to $585. Facilities in Texas have a choice of accrediting with the department or with the ACR. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the radiation control mammography and certification programs to ensure continued provision of safe, properly operating mammography systems for patients and protection of the public, workers, and the environment from unnecessary exposure to radiation.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Environmental and Consumer Safety Section, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register,* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control website (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us, if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment to §289.204 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control registrations that it issues; §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendment affects the Health and Safety Code, Chapters 12, 401, and 1001; and Government Code, Chapter 531.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) (No change.)

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

(A) - (B) (No change.)

(C) a certificate of registration for radiation machines and/or services, or sources of laser radiation, issued in accordance with §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.230 of this title (relating to Certification of Mammography Systems and Mammography Machines Used for Interventional Breast Radiography), [~~§289.230 of this title (relating to Certification of Mammography Systems and Accreditation of Mammography Facilities),~~] a certificate of registration for dental radiation machines in accordance with §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines), a certificate of registration for radiation machines used in veterinary medicine in accordance with §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), §289.234 of this title (relating to Mammography Accreditation), or §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices); or

(2) - (3) (No change.)

(c) - (f) (No change.)

(g) Fees for certification of mammography systems and mammography machines used for interventional breast radiography. No application will be accepted for filing or processed prior to payment of the full amount specified in paragraph (1) of this subsection.

(1) An application for certification of mammography systems shall be accompanied by a nonrefundable fee of $1,745 [~~$422 for each unit~~]. Additional mammography systems that have not been assigned a separate United States Food and Drug Administration (FDA) identification number shall be authorized on the same certification. A nonrefundable fee of $204 for each additional mammography system on the same certification shall be included in the nonrefundable application fee.

(2) The annual fee for mammography systems is $1,745 [~~$422 for each unit~~]. A fee of $204 for each additional mammography system on the same certification shall be included in the annual fee.

(3) Fees for mammography machines used for interventional breast radiography shall be as follows:

(A) An application for certification of machines used for interventional breast radiography shall be accompanied by a nonrefundable fee of $422. A nonrefundable fee of $204 for each additional machine used for interventional breast radiography on the same certification shall be included in the nonrefundable application fee.

(B) The annual fee for machines used for interventional breast radiography is $422. A fee of $204 for each additional machine used for interventional breast radiography on the same certification shall be included in the annual fee.

(h) Fees for accreditation of mammography facilities.

(1) (No change.)

(2) Fees for accreditation of mammography facilities are as follows.

(A) The accreditation fee for the first mammography machine is $980 [~~$880~~].

(B) The accreditation fee for each additional mammography machine is $585 [~~$490~~].

(C) The fee for re-evaluation of clinical images due to failure during the accreditation process is $305 [~~$270~~] per mammography machine.

(D) The fee for re-evaluation of phantom images due to failure during the accreditation process is $340 [~~$210~~] per machine.

(E) (No change.)

(F) The fee for reinstatement of a mammography machine is $585 [~~$610~~].

(G) The fee for replacement of thermoluminescent dosimeters (TLD) is $75 [~~$70~~].

(H) - (J) (No change.)

(i) - (p) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606786
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 458-7111 x6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER GG. HEALTH CARE QUALITY ASSURANCE PRESUMED COMPLIANCE

28 TAC §§21.4101 - 21.4106

The Texas Department of Insurance proposes new Subchapter GG, §§21.4101 - 21.4106, concerning health care quality assurance presumed compliance for certain entities that offer health benefit plans. These new sections are necessary to implement §1 of SB 155, enacted by the 79th Legislature, Regular Session, which added Insurance Code Chapter 847, the Health Care Quality Assurance Act (Act), effective June 17, 2005. The Insurance Code Chapter 847 applies to entities that: issue a health benefit plan, as defined in Insurance Code §847.003(2); hold a license or certificate of authority issued by the Commissioner; and provide benefits for medical or surgical expenses as a result of a health condition, accident, or sickness, including those entities listed in the Insurance Code §847.004.

The Department posted an informal draft of the new sections on its Internet website from November 20 through December 6, 2006, and invited public input. The purpose of the proposed rule and the Act is to provide standards for the appropriate recognition of accreditation by nationally recognized accreditation organizations of health benefit plan issuers. These standards will facilitate increased affordability of health benefit plan coverage for consumers and eliminate the duplication of effort by both health

benefit plan issuers and state agencies. Consistent with the Act, the proposed rule outlines the conditions under which a health benefit plan issuer shall be presumed in compliance with state statutory and regulatory requirements, as provided in the Insurance Code §847.005(a), and outlines the confidentiality requirements of accreditation reports, summary results, and examination reports, as provided in the Insurance Code §847.006. Under the Act, accreditation reports are proprietary and confidential information and summary results are not proprietary information and subject to public disclosure. As authorized by the Insurance Code §847.005(e), the proposed rule prescribes the procedures and the schedule for the Department's monitoring and periodic analysis of national accreditation organization standards, as well as updates and amendments made to those standards, compared to state statutory and regulatory requirements. The Department proposes to monitor and analyze updates to national accreditation organization standards on at least an annual basis because the national accreditation organizations generally publish updates to their standards on an annual basis. As authorized by Insurance Code §847.007(c), the proposal determines the applications of compliance by delegated entities, delegated third parties, and utilization review agents by the health benefit plan issuer that contracts with delegated entities, delegated third parties, and utilization review agents. As authorized by the Insurance Code §847.005(d) and §847.006(a), the proposal requires health benefit plan issuers to report loss of nonconditional accreditation status to the Department. Additionally, the proposed rule defines relevant terms, some of which are referenced in, but not defined by the Act. The definitions section of the proposed text includes an updated reference to the Insurance Code Article 21.58A §2(21), which is revised as §4201.002(14) effective April 1, 2007, as a result of the enactment of the nonsubstantive revision of the Insurance Code by the 79th Legislature, Regular Session, HB 2017.

Section 21.4101 states the purpose and the scope of the subchapter. Section 21.4102 defines relevant terms, including accreditation report, nonconditional accreditation, and summary results. Section 21.4103(a) sets forth the requirements by which a health benefit plan issuer shall be presumed in compliance with state statutory and regulatory requirements. Section 21.4103(b) requires that in conducting an examination of a health benefit plan issuer, the Commissioner shall accept an accreditation survey report submitted by a health benefit plan issuer as evidence of compliance with the processes and standards for which the health benefit plan issuer has received nonconditional accreditation. Section 21.4103(c) sets forth exceptions to the presumed compliance section. Section 21.4103(d) requires health benefit plan issuers seeking presumed compliance to provide to the Department a complete copy of the accreditation report. Section 21.4103(e) provides that if a health benefit plan issuer loses nonconditional accreditation status, it must report this change in status to the Department within 30 days. Section 21.4104(a) allows presumed compliance of functions that health benefit plan issuers delegate to delegated entities, delegated third parties, and utilization review agents when the health benefit plan issuer is accredited by a national accreditation organization, and §21.4104(b) allows presumed compliance of delegated functions when a health benefit plan issuer is not, but the delegated entity, delegated third party, or utilization review agent of the health benefit plan issuer is accredited by a national accreditation organization. Section 21.4105 provides that the Department shall: in subsection (a), compare national accreditation organization standards with state statutory and regulatory requirements; in subsection (b), monitor and analyze, at least annually, updates to national accreditation organization standards; in subsection (c), post a presumed compliance table on its Internet website; and in subsection (d), update the posted table of standards at least annually. Section 21.4106(a) sets forth the confidentiality requirements for accreditation reports; subsection (b) sets forth the confidentiality requirements for summary results; and subsection (c) sets forth the confidentiality requirements for examination reports.

Jennifer Ahrens, Associate Commissioner for the Life, Health, & Licensing Division, has determined that for each year of the first five years the proposed sections will be in effect, there may be some cost savings for state government as a result of the enforcement or administration of the proposal. The SB 155 Bill Analysis (TEXAS STATE SENATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENROLLED), SB 155, 79TH Leg., R.S. (July 18, 2005)), states that the Act will, "…help reduce costs for state agencies overseeing licensing of health care entities, without reducing quality standards" and the presumed compliance standards under the Act should relieve state agencies from at least some of the lengthy onsite examinations of health benefit plan issuers. According to the SB 155 Fiscal Note (LEGISLATIVE BUDGET BOARD, FISCAL NOTE (ENROLLED), SB 155, 79TH Leg., R.S. (May 26, 2005)), this reduction in actual costs is not expected to be significant. However, the SB 155 Bill Analysis states that this change in process will ". . . allow the applicable state agencies to focus on other issues . . . ." The Department estimates that the current time it takes Department staff to examine an accredited health benefit plan issuer will be reduced by as much as half. The Department will require a health benefit plan issuer to submit their accreditation report to the Department in lieu of the Department conducting an onsite review of various plan documents. This change to the examination process will reduce travel time for relevant Department staff, which will enable those staff to devote their time to other regulatory matters.

Ms. Ahrens has also determined that there will be no fiscal impact to local government as a result of enforcing or administering the proposed sections. Additionally, the proposal will have no measurable effect on local employment or the local economy.

Ms. Ahrens also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of the proposed new sections will be elimination of the unnecessary duplication of reviews of the processes of health benefit plan issuers by state regulators and national accreditation organizations and potential cost savings to consumers through increased affordability of health benefit plan coverage for consumers. According to the SB 155 Bill Analysis (TEXAS STATE SENATE AFFAIRS COMMITTEE, BILL ANALYSIS (ENROLLED), SB 155, 79TH Leg., R.S. (July 18, 2005)), preparing for review by national accreditation organizations, as well as for state agencies, can cost a health benefit plan issuer hundreds of thousands or millions of dollars. Additionally, the SB 155 Bill Analysis states: "Many of the systems and processes used by NCQA and URAC are also used by state agencies in conducting their accreditation reviews. This results in multiple and redundant reviews." Avoiding unnecessarily duplicative reviews will save health benefit plan issuers some of the substantial costs associated with preparing for reviews. It is anticipated that health benefit plan issuers will pass those costs savings on to consumers.

Ms. Ahrens has determined that any economic costs to persons or entities required to comply with the proposal results from the enactment of Insurance Code Chapter 847 and are not the re-

sult of the proposed rule. Accordingly, there is no anticipated difference between the costs of compliance for large and small or micro businesses as a result of the proposed sections. The Department has considered the purposes of the relevant statute, which is to avoid duplication of effort and facilitate cost savings by allowing for presumed compliance with certain state statutory and regulatory requirements of appropriately accredited health benefit plan issuers, and has determined that it is neither legal, feasible, nor necessary to waive or modify the requirements of the sections for small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 29, 2007 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jennifer Ahrens, Associate Commissioner, Life, Health & Licensing Division, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

The new sections are proposed pursuant to the Insurance Code §§847.005(a), (d), and (e); 847.006(a) and (b); 847.007(a), (b), and (c); 843.006(b); 1272.001(a)(1) and (a)(3); Article 21.58A §2(21); and 36.001. Section 847.005(a) states that a health benefit plan issuer is presumed to be in compliance with state and statutory regulatory requirements if the health benefit plan issuer has received nonconditional accreditation by a national accreditation organization and the national accreditation organization's accreditation requirements are the same, substantially similar to, or more stringent than the Department's statutory or regulatory requirements; Section 847.005(d) provides that the commissioner may take appropriate action, including the imposition of sanctions under Chapter 82, against a health benefit plan issuer who is presumed under Subsection (a), (b), or (c) of §847.005 to be in compliance with state statutory and regulatory requirements but does not maintain compliance with the same, substantially similar, or more stringent requirements applicable to the health benefit plan issuer under Subsection (a), (b), or (c). Section 847.005(e) provides that the Department shall monitor and analyze periodically as prescribed by rule the Commissioner updates and amendments made to national accreditation organization standards as necessary to ensure that those standards remain the same, substantially similar to, or more stringent than the Department's statutory or regulatory requirements. Section 847.006(a) provides that the Commissioner may require a health benefit plan issuer to submit to the Commissioner the accreditation report issued by the national accreditation organization. Section 847.006(b) states that an accreditation report submitted under Subsection (a) is proprietary and confidential information under Chapter 552, Government Code, and is not subject to subpoena. Section 847.007(a) states that in conducting an examination of a health benefit plan issuer, the Commissioner shall except the accreditation report submitted by the health benefit plan issuer as prima facie demonstration of the issuer's compliance with the processes and standards for which the issuer has received nonconditional accreditation and may adopt relevant findings in a health benefit plan issuer's accreditation report if the accreditation report complies with the nondisclosure of proprietary and confidential information and personal health information. Section 847.007(b) provides that Subsection (a) does not apply to any process or standard of a health benefit plan issuer that is not covered as part of the issuer's accreditation and that this section does not set minimum quality standards but only operates as a replacement of duplicate requirements. Section 847.007(c) provides that the Commissioner may by rule determine the application of compliance with national accreditation organization requirements by a delegated entity, delegated third party, or utilization review agent to compliance by the health plan issuer that contracts with the delegated entity, delegated third party, or utilization review agent. Section 843.006(b) provides that an examination report is confidential but may be released if, in the opinion of the Commissioner, the release is in the public interest. Section 1272.001(a)(1) defines delegated entity. Section 1272.001(a)(3) defines delegated third party. Article 21.58A §2(21) defines utilization review agent. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Department under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal:

Insurance Code §§847.005(a), (d), and (e); 847.006(a) and (b); 847.007(a), (b), and (c); 843.006(b); 1272.001(a)(1) and (a)(3); and Article 21.58A §2(21)

§21.4101. Purpose and Scope.

(a) General purpose. This subchapter implements provisions of the Health Care Quality Assurance Act (Act), the Insurance Code Chapter 847. The general purpose of the Act and this subchapter is to provide standards for the appropriate recognition of accreditation of health benefit plan issuers by nationally recognized accreditation organizations. These standards will facilitate increased affordability of health benefit plan coverage for consumers and eliminate the duplication of effort by both health benefit plan issuers and state agencies.

(b) Applicability. This subchapter applies to an entity that:

(1) issues a health benefit plan as defined in the Insurance Code §847.003(2);

(2) holds a license or certificate of authority issued by the commissioner; and

(3) provides benefits for medical or surgical expenses as a result of a health condition, accident, or sickness, including those entities listed in the Insurance Code §847.004.

§21.4102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) Accreditation report--The final report a national accreditation organization issues that contains a detailed analysis of the accreditation survey results including the scores of the health benefit plan issuer and the extent to which the health benefit plan issuer meets or exceeds, or fails to meet, the required accreditation standards.

(2) Delegated entity--Has the meaning assigned by the Insurance Code §1272.001(a)(1).

(3) Delegated third party--Has the meaning assigned by the Insurance Code §1272.001(a)(3).

(4) Health benefit plan--Has the meaning assigned by the Insurance Code §847.003(2).

(5) National accreditation organization--Has the meaning assigned by the Insurance Code §847.003(3).

(6) Nonconditional accreditation--Final accreditation survey results a national accreditation organization issues stating an out-

come that meets or exceeds the requirements of the national accrediting organization in a particular category and that is not conditional or contingent upon the health benefit plan issuer correcting any deficiencies.

(7) Summary results--A synopsis of the final accreditation survey results, excluding numeric scores and percentages, that a national accreditation organization issues that provides the accreditation outcome results of the health benefit plan issuer, such as in report card format, but that is not a complete and detailed report of the accreditation survey results.

(8) Utilization review agent--Has the meaning assigned by the Insurance Code Article 21.58A §2(21) (§4201.002(14) effective April 1, 2007).

§21.4103. Presumed Compliance.

(a) Health benefit plan issuer presumed compliance. Pursuant to Insurance Code §847.005(a), a health benefit plan issuer shall be presumed to be in compliance with state statutory and regulatory requirements if:

(1) a national accreditation organization has issued the health benefit plan issuer nonconditional accreditation applicable to its operations within the state of Texas; and

(2) the national accreditation organization's accreditation requirements are the same, substantially similar to, or more stringent than the department's statutory and regulatory requirements.

(b) Examination. Pursuant to Insurance Code §847.007(a), in conducting an examination of a health benefit plan issuer, the commissioner:

(1) shall accept the accreditation report submitted by the health benefit plan issuer as evidence of the health benefit plan issuer's compliance with the processes and standards for which the issuer has received nonconditional accreditation; and

(2) may adopt relevant findings from a health benefit plan issuer's accreditation report in the examination report if the accreditation report complies with applicable state and federal requirements regarding the nondisclosure of proprietary and confidential information and personal health information.

(c) Exceptions. Pursuant to Insurance Code §847.007(b), this section does not:

(1) apply to any process or standard of a health benefit plan issuer that is not covered as part of the health benefit plan issuer's accreditation; or

(2) set minimum quality standards.

(d) Submission of report. Pursuant to Insurance Code §847.006(a), at the department's request, the health benefit plan issuer seeking presumed compliance pursuant to subsection (b) of this section must provide to the department a complete copy of the accreditation report issued by the national accreditation organization.

(e) Loss of accreditation. If a health benefit plan issuer loses nonconditional accreditation, the health benefit plan issuer shall report this change in accreditation status to the department not later than the 30th day of notification by the national accreditation organization notifies the health benefit plan issuer of the loss of nonconditional accreditation status. A health benefit plan issuer will be subject to immediate examination by the department if it loses its accreditation status.

§21.4104. Health Benefit Plan Issuers Contracting with Delegated Entities, Delegated Third Parties, and Utilization Review Agents.

(a) Delegations by accredited health benefit plan issuers. If an accredited health benefit plan issuer has delegated one or more functions to a delegated entity, delegated third party, or utilization review agent, those delegated functions shall be presumed in compliance with department requirements if:

(1) the delegation was in place at the time of the accreditation organization's review of the health benefit plan issuer; or

(2) the delegated entity, delegated third party, or utilization review agent has received nonconditional accreditation or certification by a national accreditation organization.

(b) Delegations by nonaccredited health benefit plan issuers. If a nonaccredited health benefit plan issuer has delegated one or more functions to a delegated entity, delegated third party, or utilization review agent those delegated functions shall be presumed in compliance with department requirements if the delegated entity, delegated third party, or utilization review agent has received nonconditional accreditation or certification by a national accreditation organization that the department recognizes, as set forth in §21.4103 of this subchapter (relating to Presumed Compliance).

§21.4105. Department Monitoring and Analysis of National Accreditation Organization Standards.

(a) Analysis of standards. The department will compare requirements for health benefit plan issuers with the standards of national accreditation organizations. The standards of national accreditation organizations that are the same, substantially similar to, or more stringent than the requirements will be identified and used to determine the presumption of compliance of health benefit plan issuers.

(b) Monitoring schedule. The department shall, at least annually, monitor and analyze updates and amendments made to accreditation standards by national accreditation organizations to ensure that those standards remain the same, substantially similar to, or more stringent than the statutory and regulatory requirements of the department.

(c) Posting of standards. The department will post a table on its Internet website that contains a summary of its comparison of national accreditation organization standards with the statutory and regulatory requirements of the department and indicates which portions of the examination process the department will presume compliance for accredited entities. The presumed compliance table listing the summary of the comparison of national accreditation standards and department statutory and regulatory requirements is available from:

(1) the Department's Internet website at: www.tdi.state.tx.us; or

(2) the Health and WC Network Certification and QA Division, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

(d) Updates to standards. The department will update the table of standards posted on its Internet website on at least an annual basis, as necessary, to reflect changes made to national accreditation organization standards.

§21.4106. Confidentiality.

(a) Accreditation reports. Pursuant to Insurance Code §847.006(b), accreditation reports submitted to the department are proprietary and confidential under the Government Code Chapter 552 and are not subject to subpoena.

(b) Summary results. Pursuant to Insurance Code §847.006(c) the summary results of a national accreditation organization are not proprietary information and are subject to public disclosure under the Government Code Chapter 552.

(c) Examination reports. Pursuant to the Insurance Code §843.006(b), examination reports are confidential, but may be released

if, in the opinion of the commissioner, the release is in the public interest. In accordance with the Insurance Code §847.006(b), if the commissioner releases an examination report, any confidential information from the accreditation report will be redacted before release.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606790
Gene Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 463-6327

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §114.6 and §114.319.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On June 15, 2004, the Houston-Galveston-Brazoria (HGB) ozone nonattainment area was classified as a moderate nonattainment area under the eight-hour national ambient air quality standard (NAAQS) under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq*.). The HGB area is therefore required to attain the eight-hour ozone NAAQS of 0.08 parts per million (ppm) by the end of ozone season 2009, and to submit a SIP revision by June 15, 2007 (69 FR 23857). Control strategies for this SIP revision must be in place by January 1, 2009. For the HGB area, defined by Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the TCEQ has developed this eight-hour ozone SIP revision in accordance with 42 USC, §7410. Hence, this rulemaking is part of the first HGB SIP revision under the eight-hour ozone standard.

The one-hour ozone NAAQS, which preceded the eight-hour ozone standard, was revoked June 15, 2005 (69 FR 23951). The one-hour ozone control strategies in the HGB area will remain in place. This set of strategies is extensive and will continue to reduce the amount of ozone precursors and ozone in the HGB airshed. On September 6, 2006 (71 FR 52656), EPA published approval of the HGB nonattainment area's one-hour ozone attainment demonstration and associated rules. The approval was published in six parts, covering the rules for the control of highly-reactive volatile organic compounds (HRVOC), the HRVOC emission cap and trade (HECT) program, the mass emission cap and trade (MECT) program for nitrogen oxides (NO_x), the one-hour ozone attainment plan, the emissions credit banking and trading program, and the discrete emission credit banking and trading program. For a more complete background on the one-hour ozone SIP revisions please see Chapter 1 of the eight-hour SIP revision that has been submitted for proposal concurrent with this rule package (Project Number 2006-027-SIP-NR).

The commission is proposing in this rulemaking a revision to the definition of diesel fuel in §114.6(7) as it is used in Subchapter H (relating to Low Emission Fuels). This revision requires that any fuel that is commonly or commercially known, sold, or represented as Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), or Marine Gas Oil (MGO) that is sold in the counties listed in §114.319(b)(2), specifically: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, meets low emission diesel fuel (LED) requirements. It was brought to the attention of the commission that certain owners or operators of marine vessels have been switching from regulated Grade No. 1-D and Grade No. 2-D diesel fuel to diesel fuels commonly known as DMX, DMA, or MGO to avoid the LED regulations of Chapter 114. By regulating these marine fuels, the commission will be able to reduce NO_x by an estimated 0.9 tons per day (tpd) in the HGB nonattainment counties as listed in §114.319(b)(2).

DMX, DMA, Grade No. 1-D, and Grade No. 2-D diesel fuels are all light distillates that share many fuel parameters. Therefore, the commission does not anticipate major difficulties in the process of either changing vessel fuels back to LED-compliant Grade No. 1-D or Grade No. 2-D or having DMX or DMA marine fuels utilize approved additives as tested and approved under the methods of §114.315.

The grades of marine fuel that are included in this proposal are normally only used by harbor craft vessels (e.g., crew and supply boats, charter fishing vessels, commercial fishing vessels, ferry or excursion vessels, pilot vessels, towboats or push boats, tug boats, and work boats). Ocean-going vessels will not be included in these regulations because they typically use heavier marine residual fuels such as Marine Distillate fuel B (DMB), Marine Distillate fuel C (DMC), or other marine residual fuels that have a higher viscosity; therefore, they do not share the characteristics of lighter 1-D and 2-D diesel fuels.

The commission is also proposing in this rulemaking a revision to the compliance schedule in §114.319 as it is used in Subchapter H (relating to Low Emission Fuels). This revision contains a new subsection (d), which establishes the compliance dates for the use of LED-compliant diesel fuels commonly known as DMX, DMA, or MGO in the HGB area. These amendments will provide producers and importers sufficient time to complete modifications that may be needed in order to comply with the LED requirements and will give sufficient time for downstream facilities to deplete existing inventory of noncompliant fuels.

The TCEQ participated in a Houston-Galveston Area Council (HGAC) stakeholder meeting in March 2006 to discuss potential control strategies. The TCEQ also conducted an informational meeting October 5, 2006, to present the rule concepts and answer questions.

SECTION BY SECTION DISCUSSION

The proposed change to §114.6 amends the definition of diesel fuel to include marine grades of fuel commonly known as DMX, DMA, or MGO in accordance with the active version of

International Organization for Standardization (ISO) 8217. This proposed change will cause fuel commonly known as DMX, DMA, or MGO to be diesel fuel in the HGB counties as listed in §114.319(b)(2). Currently, the definition only refers to Grade No. 1-D and Grade No. 2-D diesel fuels. This proposal gives the commission power to regulate fuels commonly known as DMX, DMA, or MGO grades of marine fuel, which are currently not regulated under the LED rules. By including these fuels in the LED regulation, the commission will reduce NO_x and other emissions in the HGB ozone nonattainment area. These reductions are necessary for this area to be able to make positive progress towards attainment with the NAAQS for ozone.

The proposed change to §114.319 adds a new subsection (d) to include a compliance schedule for the introduction of LED-compliant diesel fuels commonly known as DMX, DMA, or MGO to the HGB area. The compliance schedule provides sufficient time for refiners to make modifications that may be necessary to produce a compliant LED fuel and provides sufficient time for facilities downstream of the refiner to deplete existing inventories of noncompliant fuels. The schedule is phased in to ensure adequate supply of compliant fuels will be available at the retail level by January 1, 2008. A revision is also made to subsection (a) to refer to the schedule as added in subsection (d).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency due to the implementation of the proposed rules. Fiscal implications are, however, anticipated for owners and operators of certain harbor craft in the coastal areas of the HGB nonattainment area, and for businesses and individuals who use their services. No fiscal implications are anticipated for other units of state or local government unless they own or operate certain harbor craft in the aforementioned areas of the state. State agencies, cities, counties, or port authorities that own or operate ferries, tugboats, push boats, or other harbor craft are expected to experience higher vessel operating costs due to the implementation of the proposed rules.

The proposed rules are intended to obtain an estimated 0.9 tpd reduction in emissions of NO_x in the HGB nonattainment area. The proposed rules would affect coastal areas of counties where LED is required. Many marine vessels use certain marine distillate fuels that are not covered under the current definition of low emission diesel fuel. This revision would maximize NO_x reductions in counties where further reductions are needed.

The proposed rules are expected to affect harbor craft vessels that use certain light diesel fuels. These vessels would include towboats or push boats, tug boats and work boats, charter fishing vessels, commercial fishing vessels, ferry or excursion vessels, pilot vessels, and crew and supply boats. Ocean-going vessels will not be included in these regulations because they typically use heavier marine residual fuels. The transition for refineries to produce the LED-compliant fuel for these vessels is not expected to be difficult.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be an improvement in air quality by reducing NO_x and other pollutants in the HGB nonattainment area.

Fiscal implications are anticipated for businesses and individuals who own or operate certain harbor craft in the affected nonattainment counties and for the businesses and individuals who purchase their services. The cost for diesel fuel for these vessels is expected to increase between an estimated $.04 to $.08 per gallon of LED.

As previously mentioned, the proposed rules are expected to affect harbor craft vessels that use certain light diesel fuels including towboats or push boats, tug boats and work boats, charter fishing vessels, commercial fishing vessels, ferry or excursion vessels, pilot vessels, and crew and supply boats. Agency staff are unable to estimate the exact number and type of vessels that will be affected by the proposed rules. However, most of the affected vessels are anticipated to operate in the Houston Ship Channel, and agency staff anticipates that most of them will be tow, push, or tug boats. According to a draft study prepared for the agency, staff estimates that there are at a minimum 530 tugs and tows operating in the ship channel, and that by 2009 these vessels will account for 29% of NO_x marine emissions. In addition, it is estimated that these vessels would consume approximately 15 million gallons of diesel fuel per year. If the proposed rules increase the price of diesel between $.04 and $.08 per gallon, owners and operators of the estimated 530 tugboats and tow vessels could expect to pay an estimated $600,000 to $1.2 million more in fuel costs each year ($1,100 to $2,200 yearly increase per vessel). It is assumed that any increase in operating costs for the vessel owners will be passed on to those who purchase their services.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses. It is not known how many of the vessels affected by the proposed rules are owned or operated by small or micro-businesses, but for those that are, they can anticipate an increase in the cost of diesel fuel from $.04 to $.08 per gallon.

The following is an analysis of the cost per employee for any tug boats or towboats owned or operated by a small or micro-business affected by the proposed amendments. Small and micro-businesses are defined as having fewer than 100 or 20 employees respectively. Tug boat or towboat owners with 100 or fewer employees could incur additional annual costs of between $1,100 to $2,200 per vessel to comply with the proposed amendments or between $11 and $22 per employee. A micro-business with 20 or less employees would incur estimated additional costs of between $55 and $110 per employee. The projected costs are the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking considering the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productiv-

ity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of the proposed amendments to §114.6 and §114.319 is to subject certain grades of marine fuels used in the HGB nonattainment counties to the LED program requirements. These grades of marine fuels have been added as part of the strategy to reduce emissions of NO_x. It is anticipated that this proposed rulemaking will positively affect human health and the environment by reducing NO_x emissions that help form ozone, and not adversely affect the economy or productivity in any material manner. Moreover, the proposed rules would make positive progress towards attainment of the federally established eight-hour ozone standard in the HGB area. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, the proposed amendments to Chapter 114 are not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed rulemaking does not meet any of the four applicability requirements. Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, this rulemaking action, which is designed to reduce NO_x emissions from marine vessels in the HGB area that have not been included in the LED program previously, does not exceed an express requirement under state or federal law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.012, 382.017, and 382.202. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based on the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b). The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The specific purpose of these revisions is to achieve reductions of NO_x emissions from marine vessels to reduce ozone formation in the HGB nonattainment area and thus help bring this area into compliance with the air quality standards established under federal law as NAAQS for ozone. As proposed, the amendments to §114.6 add certain grades of marine fuels to the definition of diesel fuel, thus subjecting the fuels used in the HGB counties to LED requirements according to the schedule proposed in §114.319. These amendments will not place a burden on private, real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution because this action does not require an investment in the permanent installation of new refinery processing equipment. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed amendments will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking will ensure that the amendments comply with 40 Code of Federal Regulations (CFR) Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations: January 29, 2007, 2:00 p.m. and 6:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston; January 31, 2007, 7:00 p.m., J. Erik Jonsson Central Library Auditorium, 1515 Young Street, Dallas; February 1, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 1, 2007, 6:00 p.m., Midlothian Conference Center, 1 Community Circle, Midlothian; February 6, 2007, 2:00 p.m., Longview Public Library, 222 W. Cotton Street, Longview; and February 8, 2007, 2:00 p.m., Texas Commission on Environmental Quality, Building E, Room 201S,

12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons planning to attend the hearings who have special communication or other accommodation needs, should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2006-036-114-EN. The comment period closes February 12, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Brandon Smith of the Air Quality Division at (512) 239-4471.

SUBCHAPTER A. DEFINITIONS

30 TAC §114.6

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005. The amendment is proposed under federal mandates contained in 42 United States Code, §7410, that require states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.6. Low Emission Fuel Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382, also known as the Texas Clean Air Act (TCAA), or in the rules of the commission, the terms used in this subchapter have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by TCAA, §3.2, and §101.1 of this title (relating to Definitions), the following words and terms, when used in Subchapter H of this chapter (relating to Low Emission Fuels), have the following meanings, unless the context clearly indicates otherwise.

(1) - (6) (No change.)

(7) Diesel fuel--Any fuel that is commonly or commercially known, sold, or represented as:

(A) Grade No. 1-D or Grade No. 2-D diesel fuel, in accordance with the active version of American Society for Testing and Materials (ASTM) D975 (Standard Specification for Diesel Fuel Oils), except for lubricity; and [.]

(B) Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), or Marine Gas Oil (MGO) diesel fuel in accordance with the active version of the International Organization for Standardization (ISO) 8217 Specifications of Marine Fuels.

(8) - (22) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606738
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-0348

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SUBCHAPTER H. LOW EMISSION FUELS
DIVISION 2. LOW EMISSION DIESEL

30 TAC §114.319

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. The amendment is also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and §382.202, concerning Vehicle Emissions Inspection and Maintenance Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of LED as described in the SIP is not required prior to February 1, 2005. The amendment is proposed under federal mandates contained in 42 United States Code, §7410, that require states

to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed amendment implements Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.017, and 382.202.

§114.319. Affected Counties and Compliance Dates.

(a) Affected persons in the counties listed in subsection (b) of this section shall be in compliance in accordance with the schedule listed in subsection (c) of this section with §§114.312 - 114.317 of this title (relating to Low Emission Diesel Standards; Designated Alternate Limits; Registration of Diesel Producers and Importers; Approved Test Methods; Monitoring, Recordkeeping, and Reporting Requirements; and Exemptions to Low Emission Diesel Requirements), as applicable, for diesel fuel defined under §114.6(7)(A) of this title (relating to Low Emission Fuel Definitions) that may ultimately be used to power a diesel-fueled compression-ignition engine in a motor vehicle or in non-road equipment.

(b) - (c) (No change.)

(d) Affected persons in the counties listed in subsection (b) of this section shall be in compliance in accordance with the schedule listed in paragraph (1), (2), or (3) of this subsection with §§114.312 - 114.317 of this title, as applicable, for any diesel as defined under §114.6(7)(B) of this title, that may ultimately be used to power a diesel-fueled compression-ignition engine located on a marine vessel in any of the counties listed in subsection (b)(2) of this section:

(1) beginning October 1, 2007, for producers and importers;

(2) beginning November 15, 2007, for bulk plant distribution facilities; and

(3) beginning January 1, 2008, for retail fuel dispensing outlets, wholesale bulk purchaser/consumer facilities, and all other affected persons.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606739
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-0348

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CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes new §115.110 and amendments to §§115.112 - 115.117, 115.119, 115.541 - 115.547, and 115.549.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On June 15, 2004, the Houston-Galveston-Brazoria (HGB) ozone nonattainment area was classified as a moderate nonattainment area under the eight-hour national ambient air quality standard (NAAQS) under the Federal Clean Air Act (FCAA) Amendments of 1990 (42 United States Code (USC), §§7401 *et seq*.). The HGB area is therefore required to attain the eight-hour ozone NAAQS of 0.08 parts per million (ppm) by the end of ozone season 2009, and to submit a SIP revision by June 15, 2007 (69 FR 23857). Control strategies for this SIP revision must be in place by January 1, 2009. For the HGB area, defined by Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties, the TCEQ has developed this eight-hour ozone SIP revision in accordance with 42 USC, §7410. Hence, this rulemaking is part of the first HGB SIP revision under the eight-hour ozone standard.

The one-hour ozone NAAQS, which preceded the eight-hour ozone standard, was revoked June 15, 2005 (69 FR 23951). The one-hour ozone control strategies in the HGB area will remain in place. This set of strategies is extensive and will continue to reduce the amount of ozone precursors and ozone in the HGB airshed. On September 6, 2006 (71 FR 52656), EPA published approval of the HGB nonattainment area's one-hour ozone attainment demonstration and associated rules. The approval was published in six parts, covering the rules for the control of highly-reactive volatile organic compounds (HRVOC), the HRVOC emission cap and trade (HECT) program, the mass emission cap and trade (MECT) program for nitrogen oxides (NO_x), the one-hour ozone attainment plan, the emissions credit banking and trading program, and the discrete emission credit banking and trading program. For a more complete background on the one-hour ozone SIP revisions please see Chapter 1 of the eight-hour SIP revision that has been submitted for proposal concurrent with this rule package (Project Number 2006-027-SIP-NR).

The proposed rulemaking would subject owners or operators of volatile organic compound (VOC) storage tanks, transport vessels, and marine vessels located in the HGB eight-hour ozone nonattainment area to more stringent control, monitoring, testing, recordkeeping, and reporting requirements. The revised requirements have been developed to reduce VOC emissions that have previously been underreported in emissions inventories (EI).

The first Texas Air Quality Study (TexAQS 2000) measured ambient VOC concentrations in the Houston Ship Channel to be greater than estimates reported in the EI. Therefore, when TCEQ and its research partners began TexAQS II in May 2005, one of the study's primary goals was to identify VOC emission sources that have been historically unreported or underreported in the EI and could potentially be contributing to the discrepancy between measured and reported emissions.

TexAQS II remote sensing VOC project results indicate that certain types of storage tank emissions, including degassing, flash, and landing loss emissions, generally have been unreported in the EI. Recent data analysis, a landing loss emissions survey, and other TCEQ studies indicate that these unreported emissions could total several thousand tons per year (tpy); unreported or underreported landing loss emissions alone in the HGB area totaled approximately 7,250 tons in 2003. The proposed rulemaking would reduce emissions from these sources as well

as other sources of potentially unreported tank emissions, such as slotted guidepoles and other tank fittings.

SECTION BY SECTION DISCUSSION

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with Texas Register requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, August 2006. Such changes include appropriate and consistent use of acronyms, section references, and certain terminology such as "that" and "which" and "shall" and "must." These changes are not discussed further.

Subchapter B. General Volatile Organic Compound Sources

Division 1. Storage of Volatile Organic Compounds

Proposed §115.110 would add two definitions used in proposed regulatory text. Proposed §115.110(1) would define *Incompatible liquid* as the term is used in proposed §115.112(d)(2)(H)(ii). The definition is intended to allow tank landings when necessary for change of service to a material that would be contaminated by the previously stored material. For example, a change in service to gasoline with a lower Reid vapor pressure that must be performed to comply with applicable fuel requirements is considered an incompatible liquid. The commission seeks comment on this definition. In particular, the commission seeks comment on how to address materials owned or produced by different entities. Proposed §115.110(2) would define *Tank battery* as the term is used in §115.112(d)(4).

Proposed changes to §115.112 would amend §115.112(a) to specify that the existing requirements apply to the HGB area until January 1, 2009. Proposed changes would also add a subsection (d) to specify additional requirements for storage vessels in the HGB area that will take effect on January 1, 2009. Proposed §115.112(d)(1) would specify the tank size and vapor pressure criteria that determine control requirements for tanks. These are the same criteria and control requirements that are now effective in the HGB area. These requirements are being moved to proposed subsection (d) to be at the same location as new provisions that will apply to tanks in the HGB area.

Proposed §115.112(d)(2) would change the control requirements for tank fittings. Proposed §115.112(d)(2)(A) would specify that all openings in an internal or external floating roof except for automatic bleeder vents, rim space vents, and roof drains must provide a projection below the liquid surface and be equipped with a cover, seal, or lid. The cover, seal, or lid must be equipped with a working gasket and kept in a closed position at all times except when the opening is in actual use. The existing rule does not include roof drains in the list of exceptions. The existing rule allows the use of either a projection below the liquid surface or a cover, seal, or lid. The proposed new language would require both means of control, and would also specify that the cover, seal, or lid must be equipped with a working gasket. With only a projection below the liquid surface, fittings still have potential for VOC emissions. The use of a cover, seal, or lid equipped with a working gasket to effectively seal off the opening from the atmosphere will reduce the VOC emissions arising from fitting losses. Proposed §115.112(d)(2)(B) would specify that automatic bleeder vents (also known as vacuum breaker vents) must be gasketed and closed at all times except when the roof is being floated off or landed on the roof leg supports. The current rule requires only that the automatic bleeder vents be closed. The new language would also require that the vents be equipped with a working gasket to further limit VOC emissions. Proposed §115.112(d)(2)(C) would require rim vents to be gasketed and set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. The existing rule specifies the requirement for the rim vent settings; the new rule would add the requirement that the vents be equipped with a working gasket to further limit VOC emissions. Proposed §115.112(d)(2)(D) requires that any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover or equivalent control. The current rule specifies the use of the slotted membrane fabric cover; the proposed rule would allow the use of other controls. Controls other than slotted membrane fabric covers are allowed by EPA regulations and can provide equivalent or superior emission reduction performance. Examples include weighted ball or ball in cage type controls. The proposed rule would also specify that the requirement does not apply to stub drains on internal floating roof tanks. Stub drains are found on internal floating roof tanks that have bolted decks. Their purpose is to allow stored liquid that collects on the roof to drain back into the tank. Covers or other controls on these stub drains would provide minimal, if any, reduction in VOC emissions.

Proposed §115.112(d)(2)(E) states that there must be no visible holes, tears, or other openings in any seal or seal fabric. Proposed §115.112(d)(2)(F) states that secondary seals on external floating roof tanks must be rim-mounted and specifies a maximum allowable area of gaps between the secondary seal and the tank wall. These provisions are identical to current requirements in §115.112(a)(2)(E) and §115.112(a)(2)(F).

Proposed §115.112(d)(2)(G) would require each slotted guidepole well to have a gasketed sliding cover or a flexible fabric sleeve seal, and a gasketed float or other device that closes off the liquid surface from the atmosphere. The amount of reduction achieved would depend on various factors including the tank size and material stored. As an example, a 100-foot diameter external floating roof tank with 4,000,000-gallon capacity that stores gasoline with a Reid vapor pressure of 9 and has 25 turnovers per year with an uncontrolled slotted guidepole would have 11.85 tons annual VOC emissions from the guidepole alone and 14 tons total annual tank VOC emissions. The same tank with a controlled slotted guidepole would have 4.5 tons annual VOC emissions from the guidepole alone and 6.6 tons total annual tank VOC emissions. For this case, controlling the slotted guidepole would result in a 62% decrease in annual VOC emissions from the guidepole and a 53% decrease in total annual tank VOC emissions.

Proposed §115.112(d)(2)(H) would specify that a floating roof must be kept floating on the liquid surface at all times except when it must be supported by leg supports during initial fill and other limited circumstances. Times when the roof is supported by its legs are referred to as "landings." Proposed §115.112(d)(2)(H) would limit the circumstances under which tank landings are allowed to times when the landing is necessary either to carry out required inspections or maintenance, or to support a change in service to a liquid that is incompatible with the previously stored liquid. Change in service to gasoline with a lower Reid vapor pressure that must be performed to comply with applicable fuel requirements is considered a change to a liquid that is incompatible with the previously stored liquid and would be allowed. Tank landings that are for the purposes of inventory control (also known as convenience landings) would not be allowed unless vapors are routed to a control device during the time that the roof is landed. Emissions from tank landings are higher than those that would occur while the roof is floating

and have generally not been included in EI. A recent survey by the Air Quality Division's Industrial Emissions Assessment Section indicates that an additional 7,250 tons from tank landings should have been reported in 2003. The proposed rule would reduce these previously unreported emissions. Tanks with a capacity less than 25,000 gallons and those storing material with a vapor pressure less than 1.5 pounds per square inch absolute (psia) are not subject to the prohibition because such tanks are not required to be equipped with floating roofs. As an alternative to the proposed requirements of §115.112(d)(2)(H)(i) - (v) would provide a compliance option where a sitewide floating roof storage tank emissions cap could be established in Chapter 116 permits to control floating roof tank landing emissions. The commission has recently established enforceable storage tank emission caps with several independent, for-hire petroleum and bulk liquid terminals in the HGB region, and is seeking comment on whether this is an appropriate mechanism for reducing emissions from tank landings. The emission caps would enable these terminals to reduce landing emissions through a combination of measures, including operational roof landing restrictions where feasible, lowering of leg position to minimize vapor space, restricting landed tank refill rates, degassing with controls following landings, and new and emerging control techniques. The caps that would be established under §115.112(d)(2)(H)(v) could not include any increase in emissions due to tank landings that would otherwise be prohibited under proposed §115.112(d)(2)(H)(i) - (iv). The commission is seeking comment on other exemptions to the proposed prohibition on convenience landings and on other possible approaches to decreasing emissions from tank landings.

Proposed §115.112(d)(3) would specify that vapor recovery systems used as a control device must maintain a minimum control efficiency of 90%. This is the same requirement that currently applies.

Proposed §115.112(d)(4) would be added to specify that flash emissions from crude oil and condensate storage tanks must be controlled if uncontrolled VOC emissions from an individual tank or collectively from a tank battery would be greater than 25 tpy. Crude oil and condensate typically contain dissolved gases that flash as the pressure on the liquid is reduced. For example, flashing occurs when the liquids are routed from a separator or other pressurized vessel to an atmospheric storage tank. The flashed gases may contain VOC in addition to methane and ethane, and may also entrain VOC from the stored liquid. In many cases, these gases can be economically routed to a vapor recovery device so that the energy content can be recovered for use at the production site or the gas can be compressed and routed to the sales line. If the volume of gas is sufficient, the capital cost for these vapor recovery devices can be repaid in a short time because of the high value of the recovered gas. The 25 tpy threshold for control was chosen because it defines the major source level for severe nonattainment areas. The HGB area was classified as severe under the one-hour ozone standard before the one-hour standard was replaced with the eight-hour standard. The proposed 25 tpy threshold also represents the maximum emission rate at which a site would be authorized to operate under a permit by rule (PBR). The 25 tpy threshold would apply to an individual tank or to an aggregation of tanks in a tank battery. Because flash emissions could occur from any of the connected tanks, the proposed rule would require that the total emissions from all connected tanks be considered in comparison to the 25 tpy threshold. The commission seeks comment on the proposed 25 tpy threshold and on how the aggregate emissions from a tank battery should be considered. The proposed rule gives several options for estimating the uncontrolled flash emissions. The methods are based on estimating an emission factor in terms of pounds of VOC emitted per barrel (lb/bbl) of oil or condensate produced. Railroad Commission regulations in Title 16 §3.58(b) require producers to file a monthly report of the amount of oil, casing head gas, natural gas, and condensate produced during the month. Owners or operators can use these production records for the previous 12 months (rolling) along with the emission factor to estimate the total VOC emissions. The emission factor can be determined by direct measurement of the gas over a 24-hour period. Gas volume can be measured by manifolding all tanks and using a device such as a mass flow meter or positive displacement meter. A sample of the gas can be analyzed using Gas Processors Association Method 2286, Tentative Method of Extended Analysis for Natural Gas and Similar Mixtures by Temperature Programmed Gas Chromatography, to measure the composition of the flashed vapors. These measurements can be used to calculate the pounds of VOC emitted over the 24-hour measurement period. The pounds of VOC can then be divided by the oil or condensate production rate in barrels to determine the emission rate in pounds of VOC per barrel. Instead of making direct measurements, the owner or operator can use default emission factors of 33.3 lb/bbl of condensate or 1.6 lb/bbl of crude. These factors were determined in a study titled *VOC Emissions from Oil and Condensate Storage Tanks*. This study, conducted in 2006, was sponsored by the Houston Advanced Research Center (HARC) and is identified as project H51C. For crude oil, owners or operators can use a chart found as Exhibit 2 of the EPA publication *Lessons Learned from Natural Gas STAR Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, to estimate the volume of flash gas per barrel of oil. The VOC mass emission rate can then be determined by assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC. These values came from the HARC H51C study. Finally, the owner or operator can use an appropriate computer simulation or other method approved by the executive director. These options are specified to minimize the burden on owners and operators to make direct measurements or complex calculations. If direct measurements yield emission rates that are higher than those determined by the default emission factors, EPA chart, or simulation, or if computer simulation yields results higher than the default emission factors or chart, the higher rates must be used. The commission seeks comment on the proposed calculation methods.

Nothing in the proposed rule implies authorization of flash emissions. All emissions must be authorized according to a permit or other authorization under 30 TAC Chapter 106 or 116. The proposed rule would regulate flash emissions from crude oil and condensate storage whether these materials are stored at oil or gas production sites, pipeline terminals, petroleum refineries, or elsewhere. Crude oil and condensate are not the only sources of flash emissions. Processes in petroleum refineries and chemical plants can generate liquids containing dissolved gases that will flash when the liquid is routed from higher pressure equipment to an atmospheric storage tank. Although flash emissions from these other liquids would not be regulated under the proposed rule, the commission is not implying that these emissions are authorized. Methods specified in the EPA *Compilation of Air Pollutant Emission Factors* (AP-42) to calculate emissions from storage tanks do not include emissions from flash. Unless these flash emissions have been separately estimated and included in best available control technology and health effects reviews dur-

ing permitting, the emissions are not authorized even if they are not expressly prohibited by regulation in Chapter 115.

Proposed §115.115(c) would specify appropriate measuring instruments and test methods for determining flash emissions if the owner or operator chooses to demonstrate compliance with the 25 tpy limit by direct measurement. The use of a mass flow meter, positive displacement meter, or similar device is proposed for determining flash gas flow rate. Conventional pitot tube or orifice plate techniques may not be appropriate for the relatively low flow rates from oil and condensate storage tanks. Flow measurements would be made over a 24-hour period representative of normal operation while the producing well is operational to make sure that the measurements capture emissions during a typical working cycle including pumping into and out of the tanks. Gas composition would be determined using Gas Processors Association Method 2286, Tentative Method of Extended Analysis for Natural Gas and Similar Mixtures by Temperature Programmed Gas Chromatography. The commission is seeking comments on these proposed measuring instruments and test methods.

Proposed §115.116(c)(1) would specify that owners or operators of storage tanks that are not required to be equipped with a floating roof or vapor recovery system because the vapor pressure of the stored material is less than 1.5 psia shall keep records of the material stored and the vapor pressure. These records are necessary to document that material stored in fixed roof tanks meets the criteria for exemption from control requirements.

Proposed §115.116(c)(2) would specify that owners or operators of crude oil or condensate storage tanks with flash emissions shall keep records to verify that emissions from these tanks are below the 25 tpy criteria for exemption from control requirements. Records must be sufficient to allow investigators to determine whether flash emissions have been calculated by an appropriate method. If a computer simulation is used, records of the input and output must be retained.

The proposed amendment to §115.117(a)(2) would specify that in the HGB area, the storage of crude oil and condensate prior to custody transfer in tanks with capacity less than 210,000 gallons will no longer be exempt from the control requirements of Subchapter B, Division 1 after January 1, 2009. The VOC emissions from such tanks at oil and gas production sites (especially emissions arising from flashed gases) have been found to be a significant source of VOC emissions and have previously not been reported.

Proposed §115.119(c) would specify that compliance with the requirements of §§115.112(d), 115.115(c), and 115.116(c) must be achieved by January 1, 2009. Tanks with a nominal capacity less than 210,000 gallons (794,850 liters) storing crude oil and condensate prior to custody transfer that were previously exempt must achieve compliance by January 1, 2009. The HGB area is required to submit a SIP revision by June 15, 2007, and to attain the eight-hour ozone standard of 0.08 ppm by the end of the ozone season in 2009. Control strategies in support of the SIP revision must be in place by January 1, 2009. However, if compliance with the new requirements would necessitate emptying and degassing the tank, compliance would not be required until the next time the tank is emptied or degassed but not later than January 1, 2017. Additional emissions that would arise from emptying and degassing a tank could negate the benefit of the emission controls and so would not be required solely for the purpose of installing controls. Because tanks are generally taken out of service at least once every ten years, the controls must be installed no later than ten years from the date these rules are adopted. The commission anticipates that most, if not all, of the required control equipment can be put into place without taking the tank out of service.

Subchapter F. Miscellaneous Industrial Sources

Division 3. Degassing or Cleaning of Stationary, Marine, and Transport Vessels

The proposed change to §115.541(a)(1) specifies that after January 1, 2009, the degassing control requirements would apply to storage tanks in the HGB area with a nominal capacity of 40,000 gallons or more. The current rule mandates degassing controls only to tanks with a nominal capacity of one million gallons or more. The EI database has records of more than 1,000 floating roof tanks between 40,000 and one million gallon capacity that could be required to employ vapor recovery during tank degassing under the proposed rule. There are also 4,000 fixed roof tanks in this size range, but an unknown number of these tanks store materials with a vapor pressure less than 0.5 psia and would not be subject to the proposed degassing requirement. Degassing emissions from these smaller tanks can be abated with technology similar to that used for larger tanks.

The proposed change to §115.542(a)(5) would specify that the current control requirements apply in the HGB area only until January 1, 2009. Proposed §115.542(a)(6) would specify new criteria for control of degassing vapors from storage tanks, transport vessels, and marine vessels in the HGB area. The change would require that vapors be vented to a control device until the VOC concentration of the vapors is reduced to less than 34,000 ppm by volume (ppmv) as methane. The current rules specify this concentration as one criterion for determining when vapors can be vented to the atmosphere but also allow venting after a turnover of four vapor space volumes has occurred. If the tanks are drained dry and if the flow of displacement gases is measured properly, four turnovers would generally be sufficient to reduce VOC concentrations to less than 34,000 ppmv. If liquid remains in the bottom of the tank or transport vessel, as commonly occurs due to irregularities in the vessel surface, the remaining liquid would continue to be a source of VOC emissions after the four turnover criterion has been satisfied. Dilution from ventilation gas used to sweep the vapor space within the vessel could also cause a reading of 34,000 ppmv VOC to be reached temporarily, but if liquid remains in the tank the concentration could again rise when the flow of ventilation gas ceases. The proposed revision would require continued control of the vapors until the VOC concentration decreases to below 34,000 ppmv. The concentration must be rechecked periodically while the tank is vented to the atmosphere to ensure that it remains below 34,000 ppmv. If ventilation is continuous, the concentration must be measured at least once every 12 hours. If ventilation ceases for more than four hours, the concentration must be rechecked before the tank is reopened.

The proposed change to §115.542(b)(4) would specify that the stated control requirements apply in the HGB area only until January 1, 2009. Proposed §115.542(b)(5) would specify new criteria for control of degassing vapors from marine vessels in the HGB area. The change would require vapors to be vented to a control device until the VOC concentration of the vapors is reduced to less than 34,000 ppmv as methane. The current rules specify this concentration as one criterion for determining when vapors can be vented to the atmosphere but also allow venting after a turnover of four vapor space volumes has occurred. This change is being proposed for degassing vapors from marine vessels for the same reasons discussed for the proposed change to

§115.542(a)(5) and proposed §115.542(a)(6) for storage vessels and transport vessels.

Proposed §115.545(11) would specify the use of an instrument with a flame ionization detector (FID) or a TCEQ-approved alternative detector to measure the VOC concentration of the storage vessels, transport vessels, or marine vessels to determine when the vapors can be vented to the atmosphere instead of to a control device. The instrument/FID must meet all requirements specified in Section 8.1 of EPA Method 21 (40 Code of Federal Regulations (CFR) Part 60, Appendix A). Requiring continuous monitoring of VOC concentration with a gas chromatograph (GC) or requiring that concentration measurements be made with Test Methods 25, 25A, or 25B would impose a disproportionate cost burden on the smaller vessels affected by the proposed rule. The instrument with an FID detector, such as that used to monitor for VOC leaks in EPA Method 21, is more readily available and provides an acceptable degree of accuracy for determining whether a vessel has been effectively degassed. The measurement should be made at the head space of the vessel, as close as possible to the tank bottom to ensure that the concentration measurement is representative of actual conditions. The commission is seeking comment on the proposed frequency and method for the concentration measurements.

Proposed §115.546(1)(D) would specify that records of the VOC concentration measurements required by §115.542(a)(6) and (b)(5) must be maintained. The records are necessary to document that degassing vapors are routed to a control device until they reach the criteria to be released to the atmosphere.

A change to §115.547(2) is proposed to state that after January 1, 2009, storage tanks in the HGB area with a nominal capacity of less than one million gallons but greater than or equal to 40,000 gallons will no longer be exempt from the requirements to control degassing emissions. As discussed earlier in this preamble, degassing emissions from these smaller tanks can be controlled with technology similar to that used to control degassing emissions from the larger tanks. The commission seeks comment on the appropriate level for exemption.

The words "causes" and "prevents" would be added to §115.547(4) so that the text more clearly expresses the intended meaning of the exemption.

Proposed §115.549(d) would specify that compliance with the new and revised requirements must be achieved by January 1, 2009. The HGB area is required to submit a SIP revision by June 15, 2007, and to attain the eight-hour ozone standard of 0.08 ppm by the end of the ozone season in 2009. Control strategies in support of the SIP revision must be in place by January 1, 2009.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules affect owners or operators of storage tanks, transport vessels, and marine vessels located in the HGB eight-hour ozone nonattainment area and have been developed to reduce VOC emissions that have been previously underreported or not reported in EI for HGB. Units of state or local governments do not typically own or operate these types of tanks and vessels, and the proposed rules are not expected to affect them.

The proposed rules would modify parts of Chapter 115 that pertain to VOC emissions in the HGB eight-hour ozone nonattainment area. The proposed rules are intended to reduce VOC emissions that have previously been underreported or not reported. The proposed rules would require compliance by January 1, 2009, unless compliance would require the emptying and degassing of an affected storage tank. In those cases, compliance would be required the next time the tank is emptied and degassed but no later than January 1, 2017.

The proposed storage tank requirements would apply to tanks in petroleum refineries, chemical plants, gasoline storage terminals, bulk terminals storing VOCs, and oil and gas production sites in the HGB area. Storage tank rules would require upgrades to VOC emission controls on the fittings of floating roof storage tanks and require previously exempt floating roof storage tanks (those between 40,000 and 210,000 gallons storing crude oil and condensate at oil and natural gas production sites) to upgrade controls also. Flash emissions would also have to be controlled, and vapor recovery or other control equipment would have to be installed if VOC emissions from a single tank or tank battery exceed 25 tpy. The proposed changes to degassing rules for the HGB area would affect owners/operators of storage tanks, transport vessels, marine vessels, and facilities that clean transport and marine vessels. Currently, storage tanks with capacities between 40,000 and 1 million gallons are exempt from degassing control requirements. The proposed rules would change the criteria for determining when a tank or vessel can be vented to the atmosphere and could result in control equipment being used for a longer period of time, thus potentially increasing operating costs. The proposed rules would also add a requirement for measuring the VOC concentration of vented gases and for keeping records of those measurements.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that the public benefit anticipated from the changes seen in the proposed rules will be lower ozone levels and improved air quality in the HGB eight-hour ozone nonattainment area.

Vapor recovery equipment to recover flash gases could be installed on crude oil or condensate storage tanks at a capital cost of $60,000 - $95,000. These would be one-time costs. Operating costs are expected to be more than offset by the value of the recovered gases.

According to the agency's EI database, there are almost 2,700 floating-roof tanks in the HGB area that might be affected by the proposed rule changes requiring more stringent control of VOC emissions from tank fittings. There are 86 storage terminals that are expected to be affected by the limitations on tank landings. The number of tanks storing crude oil and condensate that will be affected by the requirement to control flash emissions is unknown. According to Railroad Commission data there are 2,260 active oil wells and 1,091 natural gas wells in the HGB area as of September 2006. A tank battery may serve one or multiple wells. Tanks at petroleum refineries and at pipeline terminals may also be affected.

Costs associated with vessel degassing vary greatly depending on the size of the vessel, the concentration of VOC, and the quantity of residual liquid in the vessel. The maximum costs are associated with large stationary storage tanks or barges, estimated as $25,000 per day. The cost of an instrument to make the concentration measurements could be up to $13,000, but

many facilities would already have the instrument for use in leak detection and repair programs.

There are more than 4,000 fixed roof and 1,000 floating roof tanks between 40,000 and one million gallon capacity that could be required to employ vapor recovery during tank degassing as a result of the proposed rules. There are 865 fixed roof and 1,250 floating roof tanks with capacities of one million gallons or more that may have to use control equipment for a longer time period during degassing because of the proposed rules. Tanks are generally expected to be degassed once every five to ten years. The actual number of tanks that would be affected is unknown because the control requirement depends on the vapor pressure of the stored material. Most of the fixed roof tanks would not likely be subject to the control requirement because they generally store materials with vapor pressures below the 0.5 psia cutoff. Transport vessels are less likely to be impacted significantly by the proposed rules because they are less likely to have residual liquid prior to degassing. These vessels would thus be less likely to be required to degas for a longer time period to meet the VOC concentration limit under the proposed rules.

Costs for tank fittings on floating roof tanks to control VOCs are estimated to be $900 per tank for an existing tank. Estimated costs for equipping slotted guidepoles on floating roof tanks with controls are $10,000 per tank. These are one-time costs.

Costs for limiting tank landings will depend on whether the site chooses to revise operating practices to limit the use of landings or to employ add-on control devices to control emissions from tank landings. If convenience landings are eliminated, the net effect would be equivalent to a capacity loss of about 15%. The 15% loss of capacity could require the construction of one new tank for every six tanks that are required to limit convenience landings. Costs for a new tank would depend on the size and type of construction. A tank with a capacity of one million gallons would cost approximately $610,400.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses since they are not typically owners/operators of the affected tanks or vessels. If a small or micro-business in the HGB eight-hour ozone nonattainment area does own or operate a tank, transport vessel, marine vessel, or a facility that cleans transport and marine vessels, then it will incur the same costs as those incurred by a large business.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of this proposed rulemaking action is to subject owners or operators of VOC storage tanks, transport vessels, and marine vessels located in the HGB eight-hour ozone nonattainment area to revised control, monitoring, testing, recordkeeping, and reporting requirements. The proposed rules would assist in identifying previously unreported emissions, and reducing them appropriately. It is anticipated that this proposed rulemaking will positively affect human health and the environment, and not adversely affect the economy or productivity in any material manner. Moreover, the proposed rules would improve air quality and make positive progress towards attainment of the HGB eight-hour ozone standard. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus is not subject to a formal regulatory analysis.

In addition, this proposed rulemaking does not meet any of the four applicability criteria of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking action, which is designed to reduce VOC emissions that have previously been underreported in EI, does not exceed an express requirement under federal or state law. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based upon the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed rules. The proposed rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rules will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed rules will maintain at least the same level of or increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 CFR, to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of Chapter 115 are applicable requirements of 30 TAC Chapter 122. Owners or operators of sites subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their Federal Operating Permits, as appropriate, in order to include the requirements of this proposed rulemaking, if it is adopted by the commission.

ANNOUNCEMENT OF HEARINGS

The commission will hold public hearings on this proposal at the following times and locations: January 29, 2007, 2:00 p.m. and 6:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston; January 31, 2007, 7:00 p.m., J. Erik Jonsson Central Library Auditorium, 1515 Young Street, Dallas; February 1, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 1, 2007, 6:00 p.m., Midlothian Conference Center, 1 Community Circle, Midlothian; February 6, 2007, 2:00 p.m., Longview Public Library, 222 W. Cotton Street, Longview; and February 8, 2007, 2:00 p.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearings.

Persons planning to attend the hearings who have special communication or other accommodation needs, should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2006-038-115-EN. The comment period closes February 12, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Teresa Hurley of the Air Quality Division at (512) 239-5316.

SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §§115.110, 115.112 - 115.117, 115.119

STATUTORY AUTHORITY

The amendments and new rule are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act). The amendments and new rule are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require the submission of information concerning the emission of air contaminants; and §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to require owners and operators of emission sources to maintain measuring and monitoring records and make such records available to the commission. The rules are proposed under federal mandates contained in 42 USC, §7410, that require states to introduce pollution con-

trol measures in order to reach specific air quality standards in particular areas of the state.

The proposed amendments and new rule implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.014, and 382.016.

§115.110. Definitions.

The following words and terms, when used in this division (relating to Storage of Volatile Organic Compounds), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 115.10 of this title (relating to Definitions).

(1) Incompatible liquid--A liquid that is a different chemical compound or a fuel with different regulatory specifications.

(2) Tank battery--A collection of equipment used to separate, treat, store, and transfer crude oil, condensate, natural gas, and produced water. A tank battery typically receives crude oil, condensate, natural gas, or some combination of these extracted products from several production wells for accumulation and separation prior to transmission to a natural gas plant or petroleum refinery.

§115.112. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and until January 1, 2009, in the Houston/Galveston/Brazoria areas as defined in §115.10 of this title (relating to Definitions), the following requirements [~~shall~~] apply.

(1) No person shall place, store, or hold in any stationary tank, reservoir, or other container any volatile organic compound (VOC) unless such container is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in Table I(a) of this paragraph for VOC other than crude oil and condensate, or Table II(a) of this paragraph for crude oil and condensate.
Figure: 30 TAC §115.112(a)(1)
[~~Figure: 30 TAC §115.112(a)(1)~~]

(2) For floating roof storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements [~~shall~~] apply.

(A) (No change.)

(B) Automatic bleeder vents (vacuum breaker vents) must [~~are to~~] be closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must [~~are to~~] be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must [~~shall~~] be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening.

(E) There must [~~shall~~] be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For external floating roof storage tanks, secondary seals must [~~shall~~] be the rim-mounted type (the seal must [~~shall~~] be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch (0.32 centimeter [~~cm~~]) in width between the secondary seal and tank wall must [~~shall~~] be no greater than 1.0 square inch [~~in^2~~] per foot (21 square centimeters per [~~cm^2/~~]meter) of tank diameter.

(3) Vapor recovery systems used as a control device on any stationary tank, reservoir, or other container must [~~shall~~] maintain a minimum control efficiency of 90%.

(b) - (c) (No change.)

(d) For all persons in the Houston/Galveston/Brazoria area the following requirements apply.

(1) No person shall place, store, or hold in any stationary tank, reservoir, or other container any VOC unless such container is capable of maintaining working pressure sufficient at all times to prevent any vapor or gas loss to the atmosphere, or is equipped with at least the control device specified in either Table I(a) of subsection (a)(1) of this section for VOC other than crude oil and condensate, or Table II(a) of subsection (a)(1) of this section for crude oil and condensate.

(2) For floating roof storage tanks subject to the provisions of paragraph (1) of this subsection, the following requirements apply.

(A) All openings in an internal or external floating roof except for automatic bleeder vents (vacuum breaker vents), rim space vents, and roof drains must provide a projection below the liquid surface and be equipped with a cover, seal, or lid. Any cover, seal, or lid must be equipped with a working gasket and kept in a closed (i.e., no visible gap) position at all times except when the device is in actual use.

(B) Automatic bleeder vents (vacuum breaker vents) must be equipped with a working gasket and closed at all times except when the roof is being floated off or landed on the roof leg supports.

(C) Rim vents, if provided, must be equipped with a working gasket and be set to open only when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting.

(D) Any roof drain that empties into the stored liquid must be equipped with a slotted membrane fabric cover that covers at least 90% of the area of the opening or an equivalent control that must be kept in a closed (i.e., no visible gap) position at all times except when the drain is in actual use. Stub drains on internal floating roof tanks are not subject to this requirement.

(E) There must be no visible holes, tears, or other openings in any seal or seal fabric.

(F) For external floating roof storage tanks, secondary seals must be the rim-mounted type (the seal must be continuous from the floating roof to the tank wall). The accumulated area of gaps that exceed 1/8 inch (0.32 centimeter) in width between the secondary seal and tank wall must be no greater than 1.0 square inch per foot (21 square centimeters per meter) of tank diameter.

(G) Each slotted guidepole well must have a gasketed sliding cover or a flexible fabric sleeve seal, and a gasketed float or other device that closes off the liquid surface from the atmosphere.

(H) The floating roof must be floating on the liquid surface at all times except when the floating roof is supported by the leg supports during the initial fill or as allowed under the following circumstances:

(i) when necessary for required maintenance or inspection;

(ii) when necessary for supporting a change in service to a liquid that is incompatible with the previously stored liquid (including change in service to a gasoline with a lower Reid vapor pressure to comply with applicable requirements);

(iii) when the tank has a capacity of less than 25,000 gallons or the vapor pressure of the material stored is less than 1.5 psia;

(iv) when the vapors are routed to a control device from the time the roof is landed until it is refloated; or

(v) when all emissions from the tank, including emissions from roof landings, have been included in a sitewide floating roof storage tank emissions cap approved under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the cap value is not increased to account for emissions from landings that would otherwise be prohibited.

(3) Vapor recovery systems used as a control device on any stationary tank, reservoir, or other container must maintain a minimum control efficiency of 90%.

(4) Tanks storing crude oil or condensate must route flashed gases to a vapor recovery system or control device if the uncontrolled VOC emissions from an individual tank, or from the aggregate of tanks in a tank battery, have the potential to equal or exceed 25 tons per year on a rolling 12-month basis. Uncontrolled emissions must be estimated by one of the following methods:

(A) direct measurement using the measuring instruments and methods specified in §115.115 of this title (relating to Approved Test Methods) with the flow measurement made over a 24-hour period typical of normal operation while the producing well is operating;

(B) using a factor of 33.3 pounds of VOC per barrel of condensate produced or 1.6 pounds of VOC per barrel of oil produced;

(C) for crude oil storage only, using the chart in Exhibit 2 of the United States Environmental Protection Agency publication *Lessons Learned from Natural Gas STAR Partners: Installing Vapor Recovery Units on Crude Oil Storage Tanks*, October 2003, and assuming that the hydrocarbon vapors have a molecular weight of 34 pounds per pound mole and are 48% by weight VOC;

(D) using an appropriate computer simulation; or

(E) other method approved by the executive director.

§115.113. Alternate Control Requirements.

Alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Storage of Volatile Organic Compounds) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.114. Inspection Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, the following inspection requirements [~~shall~~] apply.

(1) For internal floating roof storage tanks, the internal floating roof and the primary seal or the secondary seal (if one is in service) must [~~shall~~] be visually inspected through a fixed roof inspection hatch at least once every 12 months. If the internal floating roof is not resting on the surface of the volatile organic compounds (VOC) inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the internal floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with §§115.541 - 115.547 of this title (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels). If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(2) For external floating roof storage tanks, the secondary seal gap must [~~shall~~] be physically measured at least once every 12 months to insure compliance with §115.112(a)(2)(F) and §115.112(d)(2)(F) of this title (relating to Control Requirements). If the secondary seal gap exceeds the limitations specified by §115.112(a)(2)(F) or §115.112(d)(2)(F) of this title, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with §§115.541 - 115.547 of this title. If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(3) If the tank is equipped with a mechanical shoe or liquid-mounted primary seal, compliance with §115.112(a)(2)(F) and §115.112(d)(2)(F) of this title can be determined by visual inspection.

(4) For external floating roof storage tanks, the secondary seal must [~~shall~~] be visually inspected at least once every six months to ensure compliance with §115.112(a)(2)(E) and (F) and (d)(2)(E) and (F) [~~§115.112(a)(2)(E) - (F)~~] of this title. If the external floating roof is not resting on the surface of the VOC inside the storage tank and is not resting on the leg supports; or liquid has accumulated on the external floating roof; or the seal is detached; or there are holes or tears in the seal fabric; or there are visible gaps between the seal and the wall of the storage tank, within 60 days of the inspection the owner or operator shall repair the items or shall empty and degas the storage tank in accordance with §§115.541 - 115.547 of this title. If a failure cannot be repaired within 60 days and if the storage tank cannot be emptied within 60 days, the owner or operator may submit written requests for up to two extensions of up to 30 additional days each to the appropriate regional office. The owner or operator shall submit a copy to any local air pollution control program with jurisdiction. Each request for an extension must [~~shall~~] include a statement that alternate storage capacity is unavailable and a schedule that will assure that the repairs will be completed as soon as possible.

(b) - (c) (No change.)

§115.115. Approved Test Methods.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, compliance with §115.112(a) and (d) of this title (relating to Control Requirements) must [~~shall~~] be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates, as necessary;

(2) Test Method 18 (40 CFR Part [~~Code of Federal Regulations~~] 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(3) Test Method 22 (40 CFR Part [~~Code of Federal Regulations~~] 60, Appendix A) for visual determination of fugitive emissions from material sources and smoke emissions from flares;

(4) Test Method 25 (40 CFR Part [~~Code of Federal Regulations~~] 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(5) Test Methods 25A or 25B (40 CFR Part [~~Code of Federal Regulations~~] 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(6) test method described in 40 CFR §60.113a(a)(1)(ii) (effective April 8, 1987) for measurement of storage tank seal gap;

(7) - (8) (No change.)

(b) (No change.)

(c) For the Houston/Galveston/Brazoria area, compliance with §115.112(d)(4) of this title may be determined by using the following measurement instruments or applying the following test methods, as appropriate:

(1) mass flow meter, positive displacement meter, or similar device over a 24-hour period representative of normal operation while the producing well is operational for flow measurements of flash gases; and

(2) Gas Processors Association Method 2286, Tentative Method of Extended Analysis for Natural Gas and Similar Mixtures by Temperature Programmed Gas Chromatography, to measure the composition of the flashed gases; or

(3) minor modifications to these test methods approved by the executive director.

§115.116. Monitoring and Recordkeeping Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, the following recordkeeping requirements [~~shall~~] apply.

(1) The owner or operator of any storage vessel with an external floating roof that [~~which~~] is exempted from the requirement for a secondary seal as specified in §115.117(a)(1), (6), and (7) of this title (relating to Exemptions) and is used to store volatile organic compounds (VOC) with a true vapor pressure greater than 1.0 pounds per square inch absolute (psia) [~~psia~~] (6.9 kilo Pascals (kPa) [~~kPa~~]) at storage conditions shall maintain records of the type of VOC stored and the average monthly true vapor pressure of the stored liquid.

(2) The results of inspections required by §115.114(a) of this title (relating to Inspection Requirements) must [~~shall~~] be recorded. For secondary seal gaps that are required to be physically measured during inspection, these records must [~~shall~~] include a calculation of emissions for all secondary seal gaps that exceed 1/8 inch (0.32 centimeter [~~cm~~]) where the accumulated area of such gaps is greater than 1.0 square inch per foot (21 square centimeters per meter) of tank diameter. These calculated reportable emissions (Tr) must [~~shall~~] be reported in the annual emissions inventory submittal required by §101.10 of this title (relating to Emissions Inventory Requirements). The emissions must [~~shall~~] be calculated using the following methodology:

(A) - (G) (No change.)

(H) Tank Emissions (with good single seal): Ts = Compilation of Air Pollutant Emission Factors (AP-42) [~~AP-42~~] Calculation (convert to pounds/day).

(I) - (J) (No change.)

(3) (No change.)

(4) The results of any testing conducted in accordance with the provisions specified in §115.115(a) of this title (relating to Approved Test Methods [~~Testing Requirements~~]) must [~~shall~~] be maintained at an affected facility.

(5) All records must [~~shall~~] be maintained for two years and be made available for review upon request by authorized representatives of the executive director, United States Environmental Protection Agency (EPA) [~~EPA~~], or local air pollution control agencies with jurisdiction.

(b) (No change.)

(c) For all persons in the Houston/Galveston/Brazoria areas, the following recordkeeping requirements apply in addition to those specified in subsection (a) of this section.

(1) The owner or operator of any storage vessel with a fixed roof that is not required to be equipped with a floating roof or vapor recovery system, as specified in either Table I(a) or Table II(a) of §115.112(a)(1) of this title (relating to Control Requirements), shall maintain records of the type of VOC stored, the length of time the material is stored, and the true vapor pressure at the average monthly storage temperature of the stored liquid. This requirement does not apply to tanks with nominal storage capacity of 25,000 gallons or less storing volatile organic liquids other than crude oil or condensate, or to tanks with nominal storage capacity of 40,000 gallons or less storing crude oil or condensate.

(2) The owner or operator of any storage vessel that stores crude oil or condensate and is not equipped with vapor recovery shall maintain records of the estimated annual emissions from the tank to document that the uncontrolled emissions are less than 25 tons per year. The records must be updated annually and must be made available for review within 72 hours upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies with jurisdiction. Projected emissions for the next year must be calculated within 30 days of the request by authorized representatives of the executive director, EPA, or local air pollution control agencies with jurisdiction.

§115.117. Exemptions.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, the following exemptions apply.

(1) Except as provided in §115.116 of this title (relating to Monitoring and Recordkeeping Requirements), any volatile organic compound (VOC) with a true vapor pressure less than 1.5 pounds per square inch absolute (psia) (10.3 kilo Pascals (kPa) [~~kPa~~]) at storage conditions is exempt from the requirements of this division (relating to [~~the~~] Storage of Volatile Organic Compounds).

(2) Crude oil and condensate stored in tanks with a nominal capacity less than 210,000 gallons (794,850 liters), prior to custody transfer, is exempt from the requirements of this division. After January 1, 2009, this exemption no longer applies in the Houston/Galveston/Brazoria area.

(3) Storage containers that [~~which~~] have a capacity of less than 25,000 gallons (94,625 liters) located at motor vehicle fuel dispensing facilities are exempt from the requirements of this division.

(4) A welded tank with a mechanical shoe primary seal that [~~which~~] has a secondary seal from the top of the shoe seal to the tank wall (a shoe-mounted secondary seal) is exempt from the requirement for retrofitting with a rim-mounted secondary seal if the shoe-mounted secondary seal was installed or scheduled for installation before August 22, 1980.

(5) - (7) (No change.)

(8) Storage containers that [~~which~~] have a capacity of no more than 1,000 gallons are exempt from the requirements of this division.

(b) - (c) (No change.)

§115.119. Counties and Compliance Schedules.

(a) - (b) (No change.)

(c) The owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with the requirements of §§115.112(d), 115.115(c), and 115.116(c) of this title (relating to Control Requirements; Approved Test Methods; and Monitoring and Recordkeeping Requirements) as soon as practicable, but no later than January 1, 2009. If compliance with these requirements would require emptying and degassing of the storage vessel, compliance is not required until the next time the vessel is emptied or degassed but no later than January 1, 2017. The owner or operator of each stationary tank with a nominal capacity less than 210,000 gallons (794,850 liters) storing crude oil and condensate prior to custody transfer in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with the requirements of this division as soon as practicable but no later than January 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606736
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-6087

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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES
DIVISION 3. DEGASSING OR CLEANING OF STATIONARY, MARINE, AND TRANSPORT VESSELS

30 TAC §§115.541 - 115.547, 115.549

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act). The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, that establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require the submission of information concerning the emission of air contaminants; and §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to require owners and operators of emission sources to maintain measuring and monitoring records and make such records available to the commission. The rules are proposed under federal mandates contained in 42 USC §7410, that require states to introduce pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.014, and 382.016.

§115.541. Emission Specifications.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas as defined in §115.10 of this title (relating to Definitions), the following emission specifications [~~shall~~] apply to degassing during or in preparation of cleaning.

(1) For all stationary volatile organic compound (VOC) storage tanks with a nominal storage capacity of one million gallons or more and after January 1, 2009, storage tanks in the Houston/Galveston/Brazoria area with a nominal storage capacity of 40,000 gallons or more.

(A) No person shall permit VOC emissions with a vapor space partial pressure greater than or equal to 0.5 pounds per square inch absolute (psia) (3.4 kilo Pascals (kPa) [~~kPa~~]) under actual storage conditions unless the vapors are processed by a vapor control system.

(B) The vapor control system must [~~shall~~] maintain a control efficiency of at least 90%.

(C) When conducting degassing or cleaning operations, no avoidable liquid or gaseous leaks, as detected by sight or sound, may [~~shall~~] originate from the degassing or cleaning operations.

(D) The intentional bypassing of a vapor control device used during degassing or cleaning is prohibited. Any visible VOC leak originating from the vapor control device or other associated product recovery device must [~~shall~~] be repaired as soon as practical.

(2) For all transport vessels, as defined in §115.10 of this title, with a nominal storage capacity of 8,000 gallons or more.

(A) (No change.)

(B) The vapor control system must [~~shall~~] maintain a control efficiency of at least 90%.

(C) When conducting degassing or cleaning operations, no avoidable liquid or gaseous leaks, as detected by sight or sound, may [~~shall~~] originate from the degassing or cleaning operations.

(D) The intentional bypassing of a vapor control device used during degassing or cleaning is prohibited. Any visible VOC leak originating from the vapor control device or other associated product recovery device must [~~shall~~] be repaired as soon as practical.

(E) All transport vessels, as defined in §115.10 of this title, must [~~shall~~] be kept vapor-tight at all times until the VOC vapors remaining in the vessel are discharged to a vapor control system.

(b) For all persons in the Beaumont/Port Arthur and Houston/Galveston/Brazoria areas, the following emission specifications [~~shall~~] apply to degassing during or in preparation of cleaning for all marine vessels, as defined in §101.1 of this title (relating to Definitions), that [~~which~~] have a nominal storage capacity of 10,000 barrels (420,000 gallons) or more and contain VOCs.

(1) No person shall degas or clean a tank that carried a VOC with a vapor partial pressure greater than or equal to 0.5 psia [~~pounds per square inch absolute~~] (3.4 kPa) unless the vapors are processed by a vapor control system.

(2) The vapor control system must [~~shall~~] maintain a control efficiency of at least 90%.

(3) When conducting degassing or cleaning operations, no avoidable liquid or gaseous leaks, as detected by sight or sound, may [~~shall~~] originate from the degassing or cleaning operations.

(4) The intentional bypassing of a vapor control device used during degassing or cleaning is prohibited. Any visible VOC leak originating from the vapor control device or other associated product recovery device must [~~shall~~] be repaired as soon as possible.

(5) All marine vessels, as defined in §101.1 of this title, containing VOCs must [~~shall~~] have all cargo tank closures properly secured, or maintain a negative pressure within the tank when a closure is opened, and must [~~shall~~] have all pressure/vacuum relief valves operating within certified limits as specified by classification society or flag state until the vapors are discharged to a vapor control system if the vessel is degassed or cleaned.

§115.542. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas as defined in §115.10 of this title (relating to Definitions), the following control requirements [~~shall~~] apply to stationary storage tanks and transport vessels.

(1) (No change.)

(2) When degassing or cleaning is effected through the hatches of a transport vessel with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means must [~~shall~~] be provided to force a vapor-tight seal between the adapter and the hatch. A means must [~~shall~~] be provided to minimize liquid drainage from the degassing or cleaning device when it is removed from the hatch of any transport vessel or to accomplish drainage before such removal.

(3) When degassing or cleaning is effected through the hatches or manways of stationary VOC storage tanks, all lines must [~~shall~~] be equipped with fittings that [~~which~~] make vapor-tight connections and that [~~which~~] are closed when disconnected; or equipped to permit residual VOC in the line to discharge into a recovery or disposal system after degassing or cleaning is complete.

(4) Degassing and cleaning equipment must [~~shall~~] be designed and operated to prevent avoidable VOC leaks.

(5) In the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and until January 1, 2009, in the Houston/Galveston/Brazoria areas, vapors must [~~Vapors shall~~] be routed to the control device until a turnover of at least four vapor space volumes has occurred, or four turnovers of the vapor space under a floating roof, or the partial vapor pressure is less than 0.5 pounds per square inch absolute (psia) [~~psia~~] (19,000 parts per million by weight (ppmw) [~~ppmw~~], or 34,000 parts per million by volume (ppmv) [~~ppmv~~] expressed as methane). After one of these conditions has been satisfied, the storage vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process.

(6) After January 1, 2009, in the Houston/Galveston/Brazoria area, vapors must be routed to the control device until the VOC measured concentration before dilution or inlet to the control device is less than 34,000 ppmv as methane. After this condition has been satisfied, the storage or transport vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process provided that the VOC concentration remains below 34,000 ppmv as methane. The VOC concentration must be measured once every 12 hours if the vessel is ventilated continuously, and upon startup if ventilation has been suspended for more than four hours. If the VOC concentration exceeds 34,000 ppmv as methane, the vessel must be routed to the control device until the concentration is below 34,000 ppmv as methane.

(b) For all persons in the Beaumont/Port Arthur and Houston/Galveston/Brazoria areas, the following control requirements [~~shall~~] apply to marine vessels.

(1) (No change.)

(2) When degassing or cleaning is effected through the hatches of a marine vessel containing VOCs with a loading arm equipped with a vapor collection adapter, then pneumatic, hydraulic, or other mechanical means must [~~shall~~] be provided to force a vapor-tight seal between the adapter and the hatch, or a negative pressure inside the cargo tank must [~~shall~~] be maintained. A means must [~~shall~~] be provided to minimize liquid drainage from the degassing or cleaning device and line when they are removed from the hatch of any marine vessel containing VOCs or to accomplish drainage before such removal.

(3) (No change.)

(4) In the Beaumont/Port Arthur area and until January 1, 2009, in the Houston/Galveston/Brazoria area, vapors must [~~Vapors shall~~] be routed to the control device until the marine vessel is stripped VOC liquid-free and a turnover of at least four vapor space volumes has occurred, the partial vapor pressure is less than 0.5 psia (19,000 ppmw, or 34,000 ppmv expressed as methane), or the concentration of VOC is less than 20% of the lower explosive limit [~~(LEL)~~]. After one of these conditions has been satisfied, the marine vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process.

(5) After January 1, 2009, in the Houston/Galveston/Brazoria area, vapors must be routed to the control device until the measured VOC concentration before dilution or inlet to the control device is less than 34,000 ppmv as methane. After this condition has been satisfied, the marine vessel may be vented to the atmosphere for the remainder of the degassing or cleaning process provided that the VOC concentration remains below 34,000 ppmv as methane. The VOC concentration must be measured once every 12 hours if the vessel is ventilated continuously, and upon startup if ventilation has been suspended for more than four hours. If the VOC concentration exceeds 34,000 ppmv as methane, the marine vessel must be routed to the control device until the concentration is below 34,000 ppmv as methane.

§115.543. Alternate Control Requirements.

For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, alternate methods of demonstrating and documenting continuous compliance with the applicable control requirements or exemption criteria in this division (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels) may be approved by the executive director in accordance with §115.910 of this title (relating to Availability of Alternate Means of Control) if emission reductions are demonstrated to be substantially equivalent.

§115.544. Inspection Requirements.

For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, the following inspection requirements [~~shall~~] apply.

(1) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from volatile organic compound (VOC) transfer operations must [~~shall~~] be conducted during each degassing or cleaning operation by the owner or operator of the VOC degassing and cleaning facility.

(2) VOC degassing or cleaning through the affected transfer lines must [~~shall~~] be discontinued when a leak is observed and the leak cannot be repaired within a reasonable length of time. The intentional bypassing of a vapor control device during cleaning or degassing is prohibited.

§115.545. Approved Test Methods.

For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas, compliance with §115.541 and §115.542 of this title (relating to Emission Specifications and Control Requirements) must [~~shall~~] be determined by applying the following test methods, as appropriate:

(1) Test Methods 1-4 (40 Code of Federal Regulations (CFR) Part 60, Appendix A) for determining flow rates;

(2) Test Method 18 (40 CFR Part 60, Appendix A) for determining gaseous organic compound emissions by gas chromatography;

(3) Test Method 25 (40 CFR Part 60, Appendix A) for determining total gaseous nonmethane organic emissions as carbon;

(4) Test Methods 25A or 25B (40 CFR Part 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis;

(5) additional test procedures described in 40 CFR §60.503(b), (c), and (d) [~~§60.503 b, c, and d~~] (effective February 14, 1989) for determining compliance for bulk gasoline terminals;

(6) Test Method 21 (40 CFR Part 60, Appendix A) for determining volatile organic compound (VOC) leaks;

(7) determination of true vapor pressure using American Society for Testing and Materials (ASTM) [~~ASTM~~] Test Method D323-89, D2879, D4953, D5190, or D5191 for the measurement of Reid vapor pressure, adjusted for actual storage temperature in accordance with API Publication 2517, Third Edition, 1989;

(8) Test Method 27 (40 CFR Part 60, Appendix A) for determining tank-truck leaks;

(9) 40 CFR §63.565(c) (effective September 19, 1995) or 40 CFR §61.304(f) (effective October 17, 2000) for determination of marine vessel vapor tightness; [~~or~~]

(10) minor modifications to these test methods approved by the executive director; or [~~.~~]

(11) VOC concentration measurements required by §115.542(a)(6) and (b)(5) of this title must be performed using an instrument with a flame ionization detector (FID), or an alternative detector approved by the executive director. The instrument/FID must meet all requirements specified in §8.1 of United States Environmental Protection Agency Method 21 (40 CFR Part 60, Appendix A).

§115.546. Monitoring and Recordkeeping Requirements.

For facilities in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas affected by §115.541 and §115.542 of this title (relating to Emission Specifications and Control Requirements), the owner or operator of any volatile organic compound (VOC) degassing or cleaning facility shall maintain the following information at the facility for at least two years and shall make such information available upon request to representatives of the executive director, United States Environmental Protection Agency [~~EPA~~], or any local air pollution control agency having jurisdiction in the area:

(1) for vessel degassing or cleaning operations:

(A) a record of the type and number of all transport vessels, stationary VOC storage tanks, and marine vessels that [~~which~~] are degassed or cleaned at the affected facility;

(B) the chemical name and estimated liquid quantity of VOC contained in each vessel prior to degassing or cleaning; [~~and~~]

(C) the chemical name and estimated liquid quantity of VOC removed from each vessel; and

(D) after January 1, 2009, in the Houston/Galveston/Brazoria area, a record of the measurements of VOC concentration from the storage vessel, transport vessel, or marine vessel being degassed while the vessel is vented to the atmosphere;

(2) - (4) (No change.)

§115.547. Exemptions.

For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston/Brazoria areas as defined in §115.10 of this title (relating to Definitions), the following exemptions apply.

(1) Degassing or cleaning any vessel with a vapor space partial pressure less than 0.5 pounds per square inch absolute (3.4 kilo Pascals [kPa]) of volatile organic compound (VOC) under actual storage conditions is exempt from the requirements of this division (relating to Degassing or Cleaning of Stationary, Marine, and Transport Vessels).

(2) Degassing or cleaning any transport vessel with a nominal storage capacity of less than 8,000 gallons, or any stationary VOC storage tank with a nominal storage capacity of less than 1 million gallons, or any marine vessel with a nominal storage capacity of less than 10,000 barrels (420,000 gallons), is exempt from the requirements of this division. After January 1, 2009, stationary VOC storage tanks in the Houston/Galveston/Brazoria area with a nominal storage capacity greater than or equal to 40,000 gallons but less than 1 million gallons are no longer exempt from the requirements of this division.

(3) (No change.)

(4) Any marine vessel that [~~which~~] has sustained damage that [~~which~~] prevents a cargo tank's opening from being properly secured, causes the onboard vapor recovery system to be inoperative, or prevents the pressure/vacuum relief valves from operating within certified limits as specified by classification society or flag state is exempt from §115.541(b) and §115.542(b) of this title (relating to Emission Specifications and Control Requirements); however, all reasonable measures must [~~shall~~] be taken to minimize VOC emissions.

(5) (No change.)

§115.549. Counties and Compliance Schedules.

(a) - (c) (No change.)

(d) All affected persons in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall comply with the requirements in §115.542(a)(6) and (b)(5), and §115.546(1)(D) of this title (relating to Control Requirements and Monitoring and Recordkeeping Requirements) as soon as practicable but no later January 1, 2009.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606737
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-6087

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CHAPTER 117. CONTROL OF AIR POLLUTION FROM NITROGEN COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §§117.10, 117.101, 117.103, 117.105 - 117.111, 117.113 - 117.117, 117.119, 117.121, 117.131, 117.133 - 117.135, 117.138, 117.139, 117.141, 117.143, 117.145, 117.147, 117.149, 117.151, 117.201, 117.203, 117.205 - 117.211, 117.213 - 117.217, 117.219, 117.221, 117.223, 117.260, 117.261, 117.265, 117.273, 117.279, 117.283, 117.301, 117.305, 117.309, 117.311, 117.313, 117.319, 117.321, 117.401, 117.405, 117.409, 117.411, 117.413, 117.419, 117.421, 117.451, 117.455, 117.458, 117.460, 117.461, 117.463, 117.465, 117.467, 117.469, 117.471, 117.473, 117.475, 117.478, 117.479, 117.481, 117.510, 117.512, 117.520, 117.524, 117.530, 117.534, 117.570, and 117.571. The commission also proposes new §§117.10, 117.100, 117.103, 117.105, 117.110, 117.115, 117.123, 117.125, 117.130, 117.135, 117.140, 117.145, 117.150, 117.152, 117.154, 117.156, 117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256, 117.300, 117.303, 117.305, 117.310, 117.315, 117.320, 117.323, 117.325, 117.330, 117.335, 117.340, 117.345, 117.350, 117.352, 117.354, 117.356, 117.400, 117.403, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, 117.456, 117.1000, 117.1003, 117.1005, 117.1010, 117.1015, 117.1020, 117.1025, 117.1035, 117.1040, 117.1045, 117.1052, 117.1054, 117.1056, 117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1125, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156, 117.1200, 117.1203, 117.1205, 117.1210, 117.1215, 117.1220, 117.1225, 117.1235, 117.1240, 117.1245, 117.1252, 117.1254, 117.1256, 117.1300, 117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354, 117.1356, 117.2000, 117.2003, 117.2010, 117.2025, 117.2030, 117.2035, 117.2045, 117.2100, 117.2103, 117.2110, 117.2125, 117.2130, 117.2135, 117.2145, 117.3000, 117.3003, 117.3005, 117.3010, 117.3020, 117.3025, 117.3035, 117.3040, 117.3045, 117.3054, 117.3056, 117.3100, 117.3101, 117.3103, 117.3110, 117.3120, 117.3123, 117.3125, 117.3140, 117.3142, 117.3145, 117.3200, 117.3201, 117.3203, 117.3205, 117.3210, 117.3215, 117.3300, 117.3303, 117.3310, 117.3325, 117.3330, 117.3335, 117.3345, 117.4000, 117.4005, 117.4025, 117.4035, 117.4040, 117.4045, 117.4050, 117.4100, 117.4105, 117.4125, 117.4135, 117.4140, 117.4145, 117.4150, 117.4200, 117.4205, 117.4210, 117.8000, 117.8010, 117.8100, 117.8110, 117.8120, 117.8130, 117.8140, 117.9000, 117.9010, 117.9020, 117.9030, 117.9100, 117.9110, 117.9120, 117.9130, 117.9200, 117.9210, 117.9300, 117.9320, 117.9340, 117.9500, 117.9800, and 117.9810. The repeals and new sections of Chapter 117 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

GENERAL BACKGROUND

The commission is proposing to repeal 30 TAC Chapter 117, Control of Air Pollution from Nitrogen Compounds, in its entirety and proposes a new reformatted Chapter 117. This proposed repeal and reformatting of Chapter 117 is necessary to accommodate new proposed rules for the eight-hour ozone attainment demonstration and to provide for future potential rulemakings. The proposed rules retain current one-hour ozone rules for all ozone attainment and nonattainment areas of the state. Further background information on the existing Chapter 117 one-hour ozone rules may be found in previous amendments to Chapter 117. In addition to the proposed reformatting of Chapter 117, the proposed rulemaking would implement requirements of House Bill (HB) 965. During the 79th Legislature, 2005, the Texas Legislature adopted HB 965, requiring the commission to conduct a study to determine the technical and economic feasibility of regulating residential water heaters. If the study indicates that regulating residential water heaters is technically or economically infeasible, HB 965 requires that the executive director recommend to the commission that the rules be repealed no later than December 31, 2006.

This proposed rulemaking also includes proposed new rules that are part of the commission's control strategy for the Dallas-Fort Worth eight-hour nonattainment area to attain the eight-hour ozone national ambient air quality standards (NAAQS) and are a part of the eight-hour attainment demonstration SIP revision for the Dallas-Fort Worth eight-hour nonattainment area. The rules proposed in this rulemaking would require emission reductions that are necessary in order for the Dallas-Fort Worth eight-hour nonattainment area to make progress toward, attain, and maintain the eight-hour ozone NAAQS.

The Federal Clean Air Act (FCAA) Amendments of 1990, as codified in 42 United States Code (USC), §§7401 *et seq.,* require EPA to set NAAQS to ensure public health and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once established by EPA. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas-Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate for the one-hour ozone NAAQS in accordance with the 1990 FCAA Amendments. The area was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas-Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998 the EPA reclassified the Dallas-Fort Worth area from "moderate" to "serious," resulting in a requirement to submit an additional SIP revision demonstrating attainment by the new deadline of November 15, 1999.

The Dallas-Fort Worth area also failed to reach attainment by the November 15, 1999, deadline. In the attainment demonstration SIP revision adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Hous-

ton-Galveston-Brazoria ozone nonattainment area were considered. Based on photochemical modeling demonstrating transport from the Houston-Galveston-Brazoria area, the agency requested an extension of the Dallas-Fort Worth area attainment date to November 15, 2007, the same attainment date as for the Houston-Galveston-Brazoria area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was later overturned by three federal courts, including the Court of Appeals for the 5th Circuit, which ruled in *Sierra Club et. al v. EPA,* 314 F. 3d 735 (2002) that EPA did not have authority to extend an area's attainment date based on transport. Although the Dallas-Fort Worth area was not the specific subject of any of these suits, the Dallas-Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approvable by EPA.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS), (62 FR 38856). The eight-hour ozone NAAQS was challenged by numerous litigants and ultimately upheld by the United States Supreme Court in February 2001. On April 30, 2004, EPA promulgated the first phase of the implementation rules for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas-Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the Dallas-Fort Worth eight-hour ozone nonattainment area. Effective June 15, 2004, nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) in the Dallas-Fort Worth area are nonattainment for the eight-hour ozone NAAQS. The Dallas-Fort Worth eight-hour nonattainment area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I Implementation Rule provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: 1) submit a one-hour ozone attainment demonstration; 2) submit an eight-hour ozone attainment providing for a 5% increment of progress (IOP) emission reductions from the area's 2002 emissions baseline that is in addition to federal and state measures already approved by EPA and achieves these reductions by June 15, 2007; or 3) submit an eight-hour ozone attainment demonstration. The due date for any option selected was June 15, 2005, one year after designation. The commission, in consultation with EPA, determined that option two was the most expeditious approach to beginning to achieve the emission reductions ultimately needed to meet the June 15, 2005, transportation conformity deadline and attain the eight-hour ozone NAAQS by June 15, 2010. Therefore, the commission adopted a 5% IOP Plan in April 2005 and submitted it to EPA. On November 29, 2005, EPA subsequently finalized its Phase II Implementation Rule for the eight-hour ozone NAAQS (Phase II Implementation Rule) (70 FR 71612). The Phase II Implementation Rule provides guidance and requirements for the remaining elements of the program to implement the eight-hour ozone NAAQS.

The emission reduction requirements from this proposed rulemaking, if adopted, would result in reductions in ozone formation in the Dallas-Fort Worth eight-hour nonattainment area and help bring the area into compliance with the eight-hour ozone NAAQS. The proposed compliance date for implementing control requirements and emission reductions for the Dallas-Fort Worth eight-hour ozone attainment demonstration is March 1, 2009. The commission is requesting comments regarding the technical feasibility of installing controls as well as the availability of vendors and control equipment by March 1, 2009. In addition, the commission is soliciting comments on alternative compliance implementation schedules, such as a phased compliance based on unit size or age.

CHAPTER 117 REFORMAT

The commission is proposing to repeal Chapter 117, Control of Air Pollution from Nitrogen Compounds, in its entirety and proposes a new reformatted Chapter 117. This proposed repeal and reformatting of Chapter 117 is necessary to accommodate new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration and to provide for future potential rulemaking. The commission is not soliciting comments on sections proposed only for reformatting, unless otherwise specified in the SECTION BY SECTION DISCUSSION section of this preamble. Some minor technical changes and corrections to existing language for rule language associated with the one-hour ozone NAAQS are proposed and are discussed in detail in the SECTION BY SECTION DISCUSSION section. The commission is accepting comments on these specific proposed minor changes and on new rules associated with the eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area. Comments received regarding sections and rule language associated only with reformatting and minor stylistic changes will not be considered and no changes will be made based on such comments, unless the comment is in regard only to how the language is reformatted. The specific portions of Chapter 117 that the commission will consider comments on are included in the following list.

Figure 1: 30 TAC Chapter 117--Preamble

Proposed subchapters, divisions, and key sections with new requirements or modifications associated with the Dallas-Fort Worth eight-hour ozone attainment demonstration include: Subchapter A, Definitions, §117.10; Subchapter B, Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, §§117.400, 117.403, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, and 117.456; Subchapter C, Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, §§117.1300, 117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354, and 117.1356; Subchapter D, Combustion Control at Minor Sources in Ozone Nonattainment Areas, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, §§117.2100, 117.2103, 117.2110, 117.2125, 117.2130, 117.2135, and 117.2145; Subchapter E, Multi-Region Combustion Control, Division 2, Cement Kilns, §§117.3103, 117.3123, 117.3125, 117.3142, and 117.3145; Subchapter E, Multi-Region Combustion Control, Division 4, East Texas Combustion, §§117.3300, 117.3303, 117.3310, 117.3325, 117.3330, 117.3335, and 117.3345; and Subchapter H, Administrative Provisions, Division 1, Compliance Schedules, §§117.9030, 117.9130, 117.9210, 117.9320, and 117.9340.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to clarify that the repeal and reformatting of 30 TAC Chapter 117 will not neg-

atively impact the status of the state's attainment and maintenance of the ozone NAAQS. All existing rules remain effective until the effective date of the proposed reformatted 30 TAC Chapter 117, if adopted. All requirements in the existing rules for the one-hour ozone NAAQS, applicable to a particular region or area that the rule applies to, have been incorporated into the proposed new formatted rules. As noted previously in this preamble, the proposed repeal and reformatting is necessary to accommodate new rules. Other minor technical changes and corrections do not affect the stringency or enforceability of the rules. Therefore, there will be no backsliding or temporary lapse in the enforcement or effectiveness of the current requirements in 30 TAC Chapter 117.

SUBCHAPTER B: COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

The commission is proposing a new Subchapter B, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, with new emission control requirements for major industrial, commercial, or institutional (ICI) sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. This proposed rulemaking is a part of the Dallas-Fort Worth eight-hour ozone attainment demonstration and the emission reductions associated with this rulemaking would help bring the Dallas-Fort Worth eight-hour ozone nonattainment area into compliance with the eight-hour ozone NAAQS.

The proposed addition of Subchapter B, Division 4 would require owners or operators of major ICI sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to reduce NO_x emissions from a wide variety of stationary sources. A major source NO_x in Dallas-Fort Worth eight-hour ozone nonattainment area is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit equal to or greater than 50 tons per year (tpy) of NO_x. The stationary source type categories with proposed controls in the rulemaking include the following: ICI boilers and gas turbines; duct burners used in turbine exhaust ducts; process heaters and furnaces; stationary internal combustion engines; brick, ceramic, and lime kilns; metallurgical heat treating and reheat furnaces; electric arc furnaces used in steel production; lead smelting blast (cupola) and reverberatory furnaces; glass melting furnaces; fiberglass and mineral wool fiber melting furnaces; fiberglass and wool fiber curing and forming ovens; heaters and ovens, and dryers used in organic solvent, printing ink, and ceramic tile, clay, and brick drying, and calcining and vitrifying; and incinerators. The proposed emission specifications for some of these source categories are consistent with the current emission specifications effective in the Houston-Galveston-Brazoria ozone nonattainment area. New emission specifications are proposed for certain source categories in the Dallas-Fort Worth eight-hour ozone nonattainment area, for which there are currently no emission specifications established in Chapter 117 for any ozone nonattainment area. These source categories proposed to be newly regulated under Chapter 117 include: brick and ceramic kilns; electric arc furnaces used in steel production; lead smelting blast (cupola) and reverberatory furnaces; heaters, ovens, and dryers; and glass, fiberglass, and mineral wool melting furnaces and curing and forming ovens.

Proposed new Subchapter B, Division 4 also includes monitoring, testing, recordkeeping, reporting, and other requirements associated with the proposed emission specifications necessary to ensure compliance with the emission specifications and to ensure that the necessary NO_x emission reductions are achieved. Specific discussion associated with the proposed emission specifications and other requirements in proposed new Subchapter B, Division 4 is provided in the SECTION BY SECTION DISCUSSION section.

The commission estimates that this proposed rule would result in a 12.7 tons per day (tpd) reduction of NO_x from major ICI sources in the Dallas-Fort Worth eight-hour ozone nonattainment area, based on 2009 future case modeling. The emission reductions that would result from this proposed rulemaking, if adopted, would result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the Dallas-Fort Worth eight-hour ozone nonattainment area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision that the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS. The proposed new rules in Subchapter B, Division 4 are one step toward meeting the state's obligations under the FCAA.

Sections 182(b)(2) and 182(f) of the FCAA require implementation of reasonably available control technology (RACT) for major sources of NO_x covered by the Alternative Controls Techniques (ACT) documents for ozone nonattainment areas classified as moderate and above. The existing Chapter 117 NO_x rules associated with the one-hour ozone NAAQS contain a specific section, existing §117.205, for RACT emission specifications for these unit types. These existing RACT requirements for the four-county Dallas-Fort Worth ozone nonattainment area are retained in the reformatted Chapter 117 and are proposed to be incorporated in a proposed new §117.205. For the Dallas-Fort Worth eight-hour ozone nonattainment area, the commission is not proposing to expand the applicability of proposed new §117.205 to the nine-county area. Furthermore, the proposed new Subchapter B, Division 4 does not include an equivalent NO_x RACT section for the Dallas-Fort Worth eight-hour ozone nonattainment area. The emission specifications in proposed new §117.410 that are necessary for the Dallas-Fort Worth eight-hour ozone attainment demonstration are equivalent or stricter NO_x emission specifications than would be under RACT for all unit and industry types specified in the EPA ACT documents for those industries in the Dallas-Fort Worth eight-hour nonattainment area. The commission therefore considers the FCAA NO_x RACT requirement fulfilled by the emission specifications for attainment demonstration proposed in §117.410 for the Dallas-Fort Worth eight-hour ozone nonattainment area.

SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

The commission is proposing a new Subchapter C, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, with new requirements for utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. Proposed new Subchapter C, Division 4 would apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating

system owned or operated by a municipality or a PUC-regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or an electric cooperative, independent power producer, municipality, river authority, or public utility located within the Dallas-Fort Worth eight-hour ozone nonattainment area. The proposed rule establishes a unit-by-unit approach for compliance with the existing emission specifications for units subject to the proposed rule. The proposed rule also provides a new efficiency, or output-based, emission specification as an option for utility boilers. This proposed new rule for electric generating units for the Dallas-Fort Worth eight-hour attainment demonstration would retain the existing heat input-based emission specifications; however, the proposal would not allow alternative system-wide emission specifications or system cap options as alternative means of compliance. Under the proposal, affected units would be required to comply with the proposed emission specifications on a unit-by-unit basis. The commission estimates that this proposed rule would result in approximately 2 tpd NO_x reductions from major utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area, based on 2009 future case modeling.

In addition, to satisfy RACT requirements for the five new counties, the existing RACT emission specifications for auxiliary steam boilers and stationary gas turbines from existing §117.105, applicable in the four-county Dallas-Fort Worth ozone nonattainment area, are proposed as emission specifications for attainment demonstration for the nine-county Dallas-Fort Worth eight-hour ozone nonattainment area. The commission is not proposing to change these RACT emission specifications; however, under this proposed rule, owners or operators would not be able to use the system cap or alternative system-wide emission specifications for compliance with the RACT emission specifications.

Specific discussion associated with the proposed specifications and other requirements in proposed new Subchapter C, Division 4 is provided in the SECTION BY SECTION DISCUSSION section. The emission reduction requirements that would result from this proposed rulemaking, if adopted, would help bring the Dallas-Fort Worth eight-hour ozone nonattainment area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision that the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS. The proposed new rules in Subchapter C, Division 4 are one step toward meeting the state's obligations under the FCAA.

SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

The commission is proposing a new Subchapter D, Division 2, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, with new requirements for minor stationary sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. The existing Subchapter D, Division 2, is proposed to be reformatted as a new Subchapter D, Division 1, entitled Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources. This proposed rule supports the Dallas-Fort Worth eight-hour ozone nonattainment area attainment demonstration by requiring a variety of stationary sources of NO_x emissions in the Dallas-Fort Worth eight-hour ozone nonattainment area to meet new emission specifications and other reductions of NO_x emissions. Because of the large amounts of NO_x reductions necessary to attain the NAAQS, all reasonable control strategies to achieve NO_x reductions must be pursued. This proposed rulemaking would require owners or operators of minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to reduce NO_x emissions from affected boilers, process heaters, stationary internal combustion engines, and gas turbines (including duct burners). A minor source NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area is any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit less than 50 tpy of NO_x.

This proposed rulemaking would regulate units at sites including small businesses and industries, hospitals, hotels, public and private office and administrative buildings, and school districts that were previously unregulated. Based on analysis of the available information, the commission estimates that this proposed rule would result in approximately 4.5 tpd in NO_x emission reductions, based on 2009 future case modeling. For modeling purposes, these emission reductions would be accounted for in the area source inventory.

SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL

DIVISION 2: CEMENT KILNS

On April 22, 2005, a settlement agreement was entered into by the TCEQ and Blue Skies Alliance, *et al.*, to resolve a lawsuit brought by the Blue Skies Alliance, *et al.*, against the EPA (2004). The settlement agreement required the commission to conduct a study of technologies for controlling NO_x emissions from cement kilns, in consultation with the parties to the settlement. The report, entitled *Assessment of NO_x Emissions Reduction Strategies for Cement Kilns--Ellis County: Final Report*, was submitted to the TCEQ on July 14, 2006, and is available on the commission's Web site at *www.tceq.state.tx.us/implementation/air/sip/BSA_settle.html.*

The study evaluated the applicability, availability, and cost-effectiveness of potential NO_x control technologies for cement kilns located in the Dallas-Fort Worth eight-hour ozone nonattainment area that could provide additional NO_x reductions beyond the requirements of Chapter 117 in effect in 2006. The report primarily focused on three active types of control technologies for cement kilns: selective catalytic reduction (SCR), selective noncatalytic reduction (SNCR), and low temperature oxidation (LoTOx). Based on the results of this study, the commission conducted modeling sensitivity studies for two levels of control to evaluate the potential ozone reduction benefit from possible cement kiln control strategies. The first control level modeling run was performed based on 35 - 50% control, and the second control level modeling run was performed based on 80 - 85% control.

After reviewing the final report of the control technology study, modeling sensitivity run results, and other available information, the commission has determined that the 35 - 50% control level is the most appropriate control level that can reasonably be in place by the 2009 ozone season for this proposed rulemaking. This control level is based on using SNCR controls on cement kilns. SNCR control technology is applicable to both dry preheater-precalciner or precalciner kilns and long wet kilns. While SCR and LoTOx control technologies may be applicable to cement kilns, these control technologies are not as well established for cement kilns as SNCR control.

To implement this control strategy, the commission is proposing a source cap approach to establish a maximum NO_x emission cap for each account. This approach provides flexibility for owners or operators to achieve the reductions modeled for this control strategy. A source cap allows an owner or operator to choose the most applicable and cost-effective control technology available to a particular kiln while still achieving the overall reductions modeled for the Dallas-Fort Worth eight-hour attainment demonstration. Owners or operators may use any applicable control technologies to achieve reductions for compliance with the source cap. In addition, the intent of the source cap approach is to establish a maximum cap on the total NO_x emissions from cement kilns at each account based on the number of kilns in operation in calendar year 2000. The provisions of the proposed new rule would prohibit expanding the source cap based on new units installed after calendar year 2000. Before an increase in NO_x emissions from a change in operation from one unit or the installation of a new kiln could occur, a corresponding decrease in NO_x emissions would be required from another existing unit, unless the account's NO_x emissions were already sufficiently below the source cap.

Compliance with the proposed source cap would be on a 30-day rolling average basis. The 30-day rolling average basis for the source cap provides flexibility to account for the inherent variability in NO_x emissions from cement kilns. Owners or operators would demonstrate compliance with the source cap using new monitoring, testing, reporting, and recordkeeping requirements in the proposed rule, as described elsewhere in this preamble. The commission estimates that this proposed rule would result in approximately 11.0 tpd in NO_x emission reductions, based on 2009 future case modeling. The commission is soliciting comment on the proposed source cap approach, particularly regarding the economic and technical feasibility of the approach.

DIVISION 3: WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

On April 19, 2000, the commission adopted rules, published in the May 5, 2000, issue of the *Texas Register* (25 TexReg 4101), that require water heaters, small boilers, and process heaters statewide to meet specific NO_x emission specifications. These rules were part of a SIP control strategy for attainment with the ozone NAAQS.

Under the adopted rules, manufacturers, distributors, retailers, and installers of natural gas-fired water heaters with a maximum rated capacity of no more than 75,000 British thermal units per hour (Btu/hr), designated as a Type 0 unit in the adopted rules, were required to meet the emission specifications in §117.465. Specifically, Type 0 units manufactured, distributed, sold, or installed on or after July 1, 2002, but no later than December 31, 2004, were required to meet a 40 nanogram per joule (ng/J) heat output limit. Type 0 units manufactured, distributed, sold, or installed on or after January 1, 2005, were required to meet a 10 ng/J heat output limit.

Type 0 units that meet the 40 ng/J emission standard have been developed and made available by manufacturers. However, in a rulemaking effective December 23, 2004, the commission proposed a one-year delay for conventional Type 0 water heaters with a capacity equal to or less than 50 gallons, and a two-year delay for conventional Type 0 water heaters with a capacity that exceeds 50 gallons, to meet the 10 ng/J emission standard. Subsequent to the initiation of the rulemaking proposal, the commission received a petition from the Gas Appliance Manufacturers Association (GAMA) on June 22, 2004, regarding the water heater rules. GAMA petitioned the commission to adopt a rule that would amend §117.465 to delay implementation of the 10 ng/J NO_x emission limit for some categories of gas water heaters and to provide an exclusion for two other specific categories of water heaters. For conventional water heaters with storage volumes of 50 gallons or less, the petitioner requested a delay in the implementation of the 10 ng/J NO_x emission limit from January 1, 2005, to January 1, 2006. For conventional water heaters with storage volumes greater than 50 gallons, the petitioner requested a delay in the implementation of the 10 ng/J NO_x emission limit from January 1, 2005, to January 1, 2007. Based on the comments received and uncertainties of equipment manufacturers' ability to meet the Type 0 emission standards, the commission adopted a rule revision to allow a two-year delay for all conventional Type 0 units.

During the 79th legislative session, the Texas Legislature adopted HB 965, requiring the commission to conduct a study to determine the technical and economic feasibility of regulating residential water heaters. According to HB 965, if the study indicates that regulating residential water heaters is technically or economically infeasible, the executive director shall recommend to the commission that the rules be repealed no later than December 31, 2006. Residential water heaters are currently regulated by 30 TAC Chapter 117, Subchapter D, Division 1. Section 117.465(b)(2) establishes a NO_x emission limit of 10 ng/J for residential natural gas-fired water heaters with a maximum rated capacity of 75,000 Btu/hr. Additionally, HB 965 specified that the study be completed by December 31, 2005. As part of the study, the commission surveyed residential water heater manufacturers to determine the practicality of implementing the 10 ng/J NO_x emission limit by the January 1, 2007, compliance date.

The commission was provided a list of seven manufacturers of natural gas-fired residential water heaters by the GAMA. Six of the seven manufacturers are located outside of Texas; one, PVI Industries, is located in Fort Worth. Of the seven manufacturers, three indicated that they would not formally respond to the survey because they do not manufacture residential water heaters affected by the 10 ng/J NO_x emission standard in §117.465(b)(2). The four remaining water heater manufacturers indicated that they could not manufacture a residential natural gas-fired water heater compliant with the 10 ng/J NO_x emission specification by the January 1, 2007, implementation date.

On February 28, 2006, the commission conducted a public hearing on the residential water heater study, as required by HB 965. The purpose of the hearing was to accept written and oral comments on the water heater survey results and study. Written and oral comments were submitted by the Honorable Patrick B. Haggerty, State Representative from El Paso, District 78 (Representative Haggerty); Houston Regional Group of the Sierra Club (HSC); CPS Energy; ATMOS Energy; CenterPoint Energy; Texas Gas Service; GAMA; and American Gas Association. All commenters advocated the repeal of the 10 ng/J NO_x emission specification on natural gas-fired residential water heaters.

As previously indicated in this preamble, the commission is proposing to repeal and reformat all of Chapter 117. In addition to the reformatting of existing Subchapter D, Division 1, this rulemaking would repeal the current 10 ng/J NO_x emission standard for Type 0 water heaters in existing §117.465(b)(2) due to comments received and uncertainties in the water heater manufacturers' ability to produce water heaters compliant with the current rule.

In addition, the proposed amendments to Chapter 117 would delete the definitions of "Power-vent unit" and "Direct-vent unit." With the proposed repeal of the 10 ng/J NO_x emission standard in existing §117.465(b)(2), the emission specifications for power-vent unit and direct-vent unit are duplicated in §117.465(b)(1) and §117.465(b)(3). The commission proposes to retain the emission standard found in §117.465(b)(1) that requires all equipment manufacturers to comply with the current 40 ng/J NO_x emission specification.

Demonstrating Noninterference under Federal Clean Air Act, Section 110(l)

The commission provides the following information to clarify why the repeal of the emission specification in existing §117.465(b)(2) will not negatively impact the status of the state's attainment with the ozone NAAQS. EPA issued draft guidance on June 8, 2005, "Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan." The guidance states (page 6) that ". . . areas have two options available to demonstrate noninterference for the affected pollutant(s)." The commission is using option one by identifying existing measures to show compliance with EPA's guidance: substitution of one measure by another with equivalent or greater emissions reduction/air quality benefits.

Background

On April 19, 2000, the commission adopted rules in Chapter 117 to regulate emissions of NO_x from gas-fired residential water heaters statewide. These rules were part of the one-hour control strategy for the Houston-Galveston-Brazoria SIP and the Dallas-Fort Worth SIP to demonstrate attainment with the NAAQS for ozone. In November 2004, the commission adopted Early Action Compacts for the Austin and San Antonio near-nonattainment areas to assist those areas in compliance with the federal ozone standard. The commission adopted changes that delayed the January 1, 2005, emission standard compliance date to January 1, 2007, in order to provide manufacturers additional time to comply. The 79th Legislature in 2005 enacted HB 965 requiring the TCEQ to perform a study regarding the technical and economic feasibility of regulating residential water heaters.

HB 965 required the commission to conduct a survey to determine whether the residential water heater manufacturers could meet the 10 ng/J emission specification in the applicable regulations by the January 1, 2007, compliance date. Staff completed the technical and economic feasibility study in cooperation with industry and trade associations by December 31, 2005.

As part of the study, the commission was provided a list of seven manufacturers of natural gas-fired residential water heaters. Of the seven manufacturers, three indicated that they would not formally respond to the survey because they do not manufacture residential water heaters affected by the 10 ng/J NO_x emission standard in §117.465(b)(2). The four remaining water heater manufacturers indicated that they could not manufacture a residential natural gas-fired water heater compliant with the 10 ng/J NO_x emission limit by January 1, 2007.

As required by HB 965, the commission held a public hearing on the findings of the technical and economic feasibility study for residential water heaters on February 28, 2006. The requirement for reasonable notice and public hearing was satisfied through the hearing held on February 28, 2006, and the public comment period, which was held from January 30, 2006, to March 1, 2006. Commenters attending the public hearing were in favor of repealing the section of the rule that establishes a NO_x emissions specification of 10 ng/J for residential natural gas-fired water heaters.

HB 965 also required emission reductions to offset the loss of SIP credits due to the repeal of the rule. The commission intends to use reductions from a currently effective rule that were not claimed for the Houston-Galveston-Brazoria one-hour ozone attainment demonstration to offset the 0.5 tpd shortfall in the Houston-Galveston-Brazoria area. Specifically, 30 TAC Chapter 117, Subchapter D, Division 2, was adopted in April 2000 and applies to minor sources of NO_x in the Houston-Galveston-Brazoria area. While the rule is included in the Houston-Galveston-Brazoria SIP, specific reductions associated with the rule from sites that are not subject to the NO_x Mass Emission Cap and Trade (MECT) program were not claimed or modeled for the Houston-Galveston-Brazoria one-hour ozone attainment demonstration. The commission estimates that a minimum of 0.7 tpd NO_x reductions were achieved from these sources through implementation of the rule. This estimate is based only on gas-fired boilers subject to 30 TAC Chapter 117, Subchapter D, Division 2, that were not included in the MECT program. Therefore, the 0.7 tpd estimate is conservative because it does not include reductions from other sources subject to this rule that were also excluded from the MECT program.

The commission proposes to use surplus reductions from the 5% IOP SIP submittal dated April 27, 2005, to offset the 0.5 tpd shortfall in the Dallas-Fort Worth four-county ozone nonattainment area. This SIP provided information and control measures to provide for a 5% IOP from the area's 2002 emissions baseline that are in addition to federal measures and state measures already approved by EPA. As shown in Table 1 of this preamble, the 5% IOP SIP contained an overall surplus of 3.35 tpd reductions. Because the reductions exceeded the required 5%, the commission proposes to use 0.5 tpd of reductions in NO_x emissions from the nine-county lean-burn and rich-burn engine rule to offset the shortfall. According to the 5% IOP SIP, this rule will achieve a 1.87 tpd NO_x reduction by June 15, 2007, which is sufficient to offset the 0.5 tpd shortfall. The reduction requirement for the 5% IOP SIP is based on total NO_x and VOC emissions combined; therefore, adjustment to the 5% IOP SIP should not be necessary.

Figure 2: 30 TAC Chapter 117--Preamble

Conclusion

Based upon all data presently before the commission, it has been determined that there are sufficient credits in place to offset the shortfall from repealing the 10 ng/J emission specification for Type 0 water heaters. Furthermore, the replacement reductions proposed by the commission in this rulemaking are achieved from combustion sources that are ground-level NO_x emission sources and will satisfy the requirement in HB 965 to use replacement reductions from the same category. Finally, this repeal would only apply to the 10 ng/J emission specification for Type 0 water heaters. The 40 ng/J emission specification for Type 0 water heaters, as well as the emission limits for Type 1 and 2 water heaters and Type 1, 2, and 3 process heaters and small boilers, are still in effect and reductions are being achieved.

DIVISION 4: EAST TEXAS COMBUSTION

Point source NO_x emissions in Dallas-Fort Worth eight-hour ozone nonattainment area account for about one-eighth of the total inventory. The majority of NO_x in the nonattainment area comes from onroad and nonroad mobile sources. Therefore,

NO_x reductions from sources outside the Dallas-Fort Worth eight-hour ozone nonattainment area must be made so that the Dallas-Fort Worth eight-hour ozone nonattainment area can demonstrate attainment with the NAAQS for ozone. The commission's emissions inventory, as well as initial information from studies being conducted by the TCEQ and Houston Area Research Council, indicates that stationary gas-fired engines in some attainment counties of the northeast Texas area represent a significant source of NO_x emissions. The proposed rules would require owners and operators of stationary, gas-fired, reciprocating internal combustion engines, unless exempted, located in the specified counties in the northeast Texas area to meet NO_x emission specifications and other requirements in order to reduce NO_x emissions and ozone transport into the Dallas-Fort Worth eight-hour ozone nonattainment area. The specific counties included in the applicability for this proposed rulemaking include the following counties: Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Franklin, Freestone, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood Counties. The commission is not proposing to apply this rule to engines located in the Dallas-Fort Worth eight-hour ozone nonattainment area. Engines located in the Dallas-Fort Worth eight-hour nonattainment area are either currently regulated by equivalent or more stringent requirements under other divisions of Chapter 117, or are proposed to be regulated in separate rules in this rulemaking.

The commission conducted modeling sensitivity studies at control levels similar to this proposed rule to all counties within or traversed by the 200 kilometer perimeter from the Dallas-Fort Worth eight-hour ozone nonattainment area, excluding the Dallas-Fort Worth nine-county area. Results of the sensitivity study, which estimated a NO_x reduction of 40.9 tpd, based on 2009 future case modeling, indicate the reductions realized by this rule would benefit the Dallas-Fort Worth area by reducing ozone an average of 0.2 to 0.3 parts per billion. Based on the revised list of 39 counties considered for this proposed rule, the commission estimates that implementation of this proposed rule would result in an overall reduction of approximately 37 tpd in NO_x emissions in the northeast Texas area. This rulemaking applies to engines in the point source inventory, as well as engines that are categorized in the area source inventory. Approximately 30 tpd of these reductions are from point source engines and approximately 7 tpd of these reductions are from area source engines. The commission estimates that approximately 985 stationary, gas-fired engines in the 39 counties would be subject to this rulemaking. This estimate includes stationary gas-fired engines from the point source emissions inventory, as well as stationary gas-fired engines classified as area sources. While this rulemaking is proposed as a part of the Dallas-Fort Worth Attainment Demonstration SIP, the commission anticipates that the Tyler-Longview area (Northeast Texas Early Action Compact Area) in East Texas would also benefit from NO_x reductions achieved by this rule.

SECTION BY SECTION DISCUSSION

The commission proposes to repeal Chapter 117 in its entirety. A new Chapter 117, Control of Air Pollution from Nitrogen Compounds, is proposed that incorporates existing rule language from existing Chapter 117, additional new rule language for the Dallas-Fort Worth eight-hour attainment demonstration, and rule changes that implement HB 965, concerning residential water heaters.

Reformatting Chapter 117 has resulted in numerous changes in section numbering, cross-references, as well as section, division, and subchapter titles. Section by section discussion associated with the reformatting and renumbering of Chapter 117 is primarily limited to proposing the new subchapters, divisions, and sections, and indicating the origin of the rule language from existing Chapter 117. Unless otherwise specified in this preamble, changes to section, division, and subchapter numbers and title cross-references are only to update the reference to the corresponding reformatting section numbers and new section, division, and subchapter titles. Such changes are non-substantive and will not be specifically discussed in this preamble.

Also associated with the proposed reformatting of Chapter 117 are various stylistic non-substantive changes to update rule language to current *Texas Register* style and format requirements, as well as establish more consistency in the rules. Such changes include appropriate and consistent use of acronyms, section references, equation style and formatting, scientific units of measure, and certain terminology such as "that" and "which," "shall" and "must," and "specification" and "limit." References to Houston-Galveston ozone nonattainment area have been updated to Houston-Galveston-Brazoria ozone nonattainment area to be consistent with current terminology for the region. Certain equations previously written out in paragraph and sentence form are proposed as mathematical equations for consistency and to ensure clarity and proper calculation in accordance with the commission's intent. Such changes are non-substantive and generally are not specifically discussed in this preamble.

Some changes proposed to existing rule language of Chapter 117 are necessary to make minor corrections to rule language and are discussed later in this preamble in the appropriate section discussion. As discussed previously in this preamble, comments received regarding sections and rule language associated only with reformatting and minor stylistic changes will not be considered and no changes will be made based on such comments. Section by section discussion is presented in the order of the proposed new section numbering order.

SUBCHAPTER A, DEFINITIONS

The commission proposes a new Chapter 117, Subchapter A, entitled Definitions, that incorporates the definitions in the existing Chapter 117, Subchapter A, relating to definitions.

Section 117.10, Definitions

The commission proposes a new §117.10 that incorporates the definitions in the existing §117.10, relating to definitions, with the following revisions. Proposed new §117.10(1) - (53) incorporate the definitions from existing §117.10(1) - (53), respectively. Specific changes to definitions are discussed as follows.

The commission proposes revising §117.10(2), concerning applicable ozone nonattainment area. The commission proposes to move the existing §117.10(2)(C), Houston/Galveston, to the new §117.10(2)(D) and revises the proposed new §117.10(2)(D) to be Houston-Galveston-Brazoria ozone nonattainment area to be consistent with current terminology and other proposed changes in this rulemaking. The commission proposes adding the definition of Dallas-Fort Worth eight-hour ozone nonattainment area to the definition of applicable ozone nonattainment area in §117.10(2)(C). The proposed new definition for the Dallas-Fort Worth eight-hour ozone nonattainment area includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties. This change, and subsequent changes to other definitions in this section to include Dallas-Fort

Worth eight-hour ozone nonattainment area are necessary because the commission is proposing new rules for the Dallas-Fort Worth eight-hour ozone nonattainment area. The existing definition of Dallas-Fort Worth ozone nonattainment area would continue to apply only to Collin, Dallas, Denton, and Tarrant Counties.

The commission proposes revising §117.10(14)(A), electric power generating system, to include systems that are owned or operated by an electric cooperative, independent power producer, municipality, river authority, public utility, or a PUC-regulated utility. This change is proposed to more accurately reflect the definition of an electric power generating system and does not expand the definition. In addition, the commission proposes adding "Dallas-Fort Worth eight-hour" to the list of ozone nonattainment areas included in the definition of electric power generating system in proposed new §117.10(14)(A)(iii). Existing §117.10(14)(A)(iii), which includes "Houston-Galveston-Brazoria" in the list of ozone nonattainment areas is proposed to be incorporated into proposed new §117.10(14)(A)(iv).

The commission proposes revising the definition of emergency situation in §117.10(15)(A)(ii) to update the references to the Electric Reliability Council of Texas (ERCOT) Protocols, to the most recent published version of the ERCOT Protocols, April 25, 2006.

The commission proposes to change large DFW system in §117.10(24) to large utility system to be consistent with *Texas Register* style and formatting requirements. In addition, the commission proposes to revise the definition in §117.10(24) to include systems located in the Dallas-Fort Worth eight-hour ozone nonattainment area.

The commission proposes revising the definition of major source in §117.10(29)(B) to include sources located in the Dallas-Fort Worth eight-hour ozone nonattainment area. In addition, Ellis and Parker Counties are proposed to be removed from §117.10(29)(D) because these counties are classified as nonattainment and are included in the proposed revised §117.10(29)(B).

The commission proposes revising the definition of parts per million by volume in §117.10(35) to include the equation that must be used to adjust pollutant concentrations to a specified oxygen (O_2) correction basis. This change is necessary to ensure that all measured concentrations are corrected to the specified O_2 correction basis, when required by an applicable rule, using a consistent methodology.

The commission proposes changing plant-wide emission limit in §117.10(37) to plant-wide emission specification to be consistent with proposed new section titles.

The commission proposes changing small DFW system in §117.10(44) to small utility system to be consistent with *Texas Register* style and formatting requirements. In addition, the commission proposes to revise the definition in §117.10(44) to include the Dallas-Fort Worth eight-hour ozone nonattainment area.

The commission proposes changing system-wide emission limit in §117.10(48) to system-wide emission specification to be consistent with proposed new section titles.

The commission proposes several revisions to the definition of unit in existing §117.10(51). Proposed new §117.10(51)(C) is revised to include a reference to proposed new §117.2110, Emission Specifications for Eight-Hour Attainment Demonstration, to define unit when used in the proposed new Subchapter D, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources. In addition, the commission proposes adding a new §117.10(51)(D) to existing §117.10(51) to define unit for the purposes of proposed new Subchapter E, Division 4, East Texas Combustion. The proposed new §117.10(51)(D) states that for the purposes of §117.3310, relating to emission specification for eight-hour attainment demonstration, and each requirement of this chapter associated with §117.3310, a unit consists of any stationary internal combustion engine, as defined in §117.10, relating to definitions.

The commission proposes adding a new §117.10(51)(E) to the existing §117.10(51) to define unit for the purposes of proposed new Subchapter B, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, and Subchapter C, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources. The proposed new §117.10(51)(E) specifies that for the purposes of proposed new §117.410 and §117.1310, relating to emission specification for eight-hour attainment demonstration, and each requirement of this chapter associated with §117.410 and §117.1310, a unit consists of any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in §117.10, relating to definitions, or any other stationary source of NO_x emissions at a major source, as defined in §117.10.

Finally, the commission proposes to revise the definition of utility boiler in existing §117.10(52). Proposed new §117.10(52) revises the definition to include equipment owned or operated by an electric cooperative, independent power producer, municipality, river authority, public utility, or PUC-regulated utility. This proposed change is intended to clarify the definition and to be consistent with other proposed changes in this rulemaking, but does not expand the applicability of the definition.

SUBCHAPTER B, COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

The commission proposes a new Chapter 117, Subchapter B, entitled Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas, that incorporates the rule language in the existing Chapter 117, Subchapter B, Combustion at Major Sources, Division 3, Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas. The structure of proposed new Subchapter B is based on regional ozone nonattainment areas. Each proposed new division applies only to a specific ozone nonattainment area. Rule language from existing Subchapter B, Division 3 that is not applicable for the specific region is not proposed to be included in the new division for that specific region. Unless otherwise specified in this preamble, such exclusions of rule language not applicable to the specific region are considered non-substantive changes and are not specifically discussed in the preamble.

In addition, the commission proposes a new Subchapter B, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, that includes new rule language and requirements associated with major industrial, commercial, and institutional sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. The new Subchapter B, Division 4 is proposed as a part of the commission's eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area.

DIVISION 1, BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA MAJOR SOURCES

The commission proposes a new Chapter 117, Subchapter B, Division 1, entitled Beaumont-Port Arthur Ozone Nonattainment Area Major Sources, that incorporates the rule language in the existing Chapter 117, Subchapter B, Division 3 applicable to major industrial, commercial, and institutional sources in the Beaumont-Port Arthur ozone nonattainment area.

Section 117.100, Applicability

The commission proposes a new §117.100 that incorporates the rule language in the existing §117.201, that are applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.100(1) - (3) incorporates the applicability rule language in existing §117.201(1) - (3).

Section 117.103, Exemptions

The commission proposes a new §117.103 that incorporates the exemption rule language in the existing §117.203 that are applicable to the Beaumont-Port Arthur ozone nonattainment area. The commission proposes a new §117.103(a)(1) - (7), relating to general exemptions, that incorporates the exemptions in the existing §117.203(a)(1) - (7). Proposed new §117.103(a)(8) incorporates the exemption of existing §117.203(a)(8)(B) and proposed new §117.103(a)(9) and (10) incorporate the exemptions in existing §117.203(a)(10) and (13).

In addition, the commission proposes a new §117.103(b) and (c) to incorporate exemptions from existing §117.205 and §117.206. This proposed change would consolidate the applicable exemptions for the Beaumont-Port Arthur ozone nonattainment area under a single section. The commission proposes a new §117.103(b)(1) - (5) consisting of the provisions in the existing §117.205(h)(1) - (5), concerning exemptions for RACT, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.103(b)(6) - (8) incorporates the exemptions in existing §117.205(h)(7) - (9), and proposed new §117.103(b)(10) incorporates the exemption in existing §117.205(h)(10)(B). The commission proposes a new §117.103(c), relating to attainment demonstration exemptions, that incorporates the exemption in existing §117.206(g) and (g)(2). The exemption in existing §117.206(g)(1), for boilers or process heaters with a maximum rated capacity less than 40 million British thermal units per hour (MMBtu/hr), is redundant because the general exemption in proposed new §117.103(a)(2) is identical.

Section 117.105, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.105 that incorporates rule language in existing §117.205, relating to emission specifications for RACT, applicable to the Beaumont-Port Arthur ozone nonattainment area.

The commission proposes a new §117.105(a) - (c) consisting of the provisions in the existing §117.205(a) - (c). In addition, the commission proposes a new equation in §117.105(b)(6) that incorporates the calculation for the NO_x emission limit for gas-fired boilers and process heaters using hydrogen-rich fuel in the existing §117.205(b)(6). The proposed new equation in §117.105(b)(6) is identical in content to the existing equation in §117.205(b)(6). The proposed new equation in §117.105(b)(6) presents the equation in a format consistent with other figures and equations in Chapter 117 and provides a written description of all the terms used in the equation.

The commission proposes a new §117.105(d) consisting of the provisions in existing §117.205(d) and (d)(2). Proposed new §117.105(e) - (g) consisting of the provisions in the existing §117.205(e) - (g). Exemptions applicable in the Beaumont-Port-Arthur ozone nonattainment area in existing §117.205(h) are proposed to be incorporated in proposed new §117.103. The commission proposes a new §117.105(h) consisting of the provisions in the existing §117.205(i) and (i)(1).

Section 117.110, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.110 that incorporates the rule language in existing §117.206, relating to emission specifications for attainment demonstrations, applicable to the Beaumont-Port Arthur ozone nonattainment area.

The commission proposes a new §117.110(a) that incorporates the NO_x emission specifications for the Beaumont-Port Arthur ozone nonattainment area in existing §117.206(a). The commission proposes a new §117.110(b), relating to NO_x averaging time, that incorporates the rule language in the existing §117.206(d)(1). Proposed new §117.110(b)(1) incorporates the requirements in existing §117.206(d)(1)(A), and proposed new §117.110(b)(2) incorporates the requirements in existing §117.206(d)(1)(B).

The commission proposes a new §117.110(c), relating to related emissions, that incorporates the rule language in existing §117.206(e). Proposed new §117.110(c)(1) and (2) incorporate the carbon monoxide (CO) and ammonia emissions specifications in the existing §117.206(e)(1) and (2). Proposed new §117.110(c)(3) incorporates the provisions regarding correction of CO emissions in existing §117.206(e)(3) and (3)(B). The commission also proposes a new §117.110(c)(4) that incorporates the rule language regarding applicability of the CO emission specifications from existing §117.206(e)(4) and (4)(A). Finally, the commission proposes a new §117.110(d) that incorporates the rule language regarding compliance flexibility from the existing §117.206(f)(1) - (3).

Section 117.115, Alternative Plant-Wide Emission Specifications

The commission proposes a new §117.115 that incorporates the rule language in existing §117.207, relating to alternative plant-wide emission specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.115(a) - (f) incorporates the rule language in the existing §117.207(a) - (f), relating to alternative plant-wide emission specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area.

Proposed new §117.115(g) incorporates the rule language from existing §117.207(g). In addition, existing §117.207(g)(1) - (3) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new formulas are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.115(g)(1) incorporates the calculation for the allowable NO_x emission rate for each affected boiler and process heater in the existing §117.207(g)(1). The proposed new equation in §117.115(g)(2) incorporates the calculation for the allowable NO_x emission rate for each affected stationary internal combustion engine in the existing §117.207(g)(2). The commission also proposes adding new equations to §117.115(g)(3) that incorporate

the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.207(g)(3). The proposed new §117.115(g)(3) presents the equation for determining the plant-wide emission specification for stationary gas turbines from the required calculation in existing §117.207(g)(3). Proposed new §117.115(g)(3) also includes a new equation in §117.115(g)(3) that incorporates the existing equation for calculating the in-stack NO_x concentration term used in calculating the plant-wide emission specification.

Finally, the commission proposes a new §117.115(h) that incorporates the rule language from existing §117.207(h), and a new §117.115(i) that incorporates the rule language from existing §117.207(i) and (i)(1).

Section 117.123, Source Cap

The commission proposes a new §117.123 that incorporates the rule language in existing §117.223, relating to source cap, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.123(a) - (k) incorporate the rule language in existing §117.223(a) - (k). In addition, the commission proposes new equations in §117.123(b) that incorporate the equations in existing §117.223(b) to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new equations in §117.123(b) include only the information applicable to the Beaumont-Port Arthur ozone nonattainment area. The proposed new equation in §117.123(b)(1) incorporates the equation for the rolling 30-day average emission cap in existing §117.223(b)(1). The commission proposes a new equation in §117.123(b)(2) that incorporates the equation for the maximum daily emission cap in existing §117.223(b)(2).

For proposed new §117.123(k), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions)." This proposed change is necessary to update the rule to current terminology used by the commission.

Section 117.125, Alternative Case Specific Specifications

The commission proposes a new §117.125 that incorporates the rule language in the existing §117.221, relating to alternative case specific specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.125(a) and (b) incorporate the rule language in existing §117.221(a) and (b). In addition, proposed new §117.125(a) omits the existing §117.221(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.130, Operating Requirements

The commission proposes a new §117.130 that incorporates the rule language in existing §117.208, relating to operating requirements, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.130(a) - (d) incorporate the rule language in existing §117.208(a) - (d). In addition, the commission is concurrently proposing a new §117.8140(b) that incorporates the engine testing requirements in the existing §117.208(d)(7). Therefore, the engine testing requirements in existing §117.208(d)(7) have been omitted from the proposed new §117.130(d)(7) and replaced with a reference to the proposed new §117.8140(b).

Section 117.135, Initial Demonstration of Compliance

The commission proposes a new §117.135 that incorporates the rule language in existing §117.211, relating to initial demonstration of compliance, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.135(a) - (d) incorporate the rule language in existing §117.211(a) - (d). The commission is concurrently proposing a new §117.8000 that incorporates the requirements in the existing §117.211(e). Therefore, the commission proposes a new §117.135(e) that replaces specific requirements from existing §117.211(e) with a reference to the proposed new §117.8000.

In addition, while existing §117.211(a) and proposed new §117.135(a) specify that units that inject urea or ammonia for NO_x control must be tested for ammonia emissions, existing §117.211(e) does not specify the methods to be used for the required ammonia initial demonstration of compliance. Proposed new §117.8000 includes a requirement that specifies the methods required for ammonia testing during the initial demonstration of compliance. Specific discussion related to this proposed change is included in the section-by-section discussion associated with proposed new §117.8000.

Proposed new §117.135(f) incorporates the rule language from existing §117.211(f), regarding initial demonstration of compliance for units operating with continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS). Finally, the commission is concurrently proposing a new §117.8010 that incorporates the report content requirements in the existing §117.211(g). Therefore, the proposed new §117.135(g) omits the compliance stack reports content requirements and references proposed new §117.8010.

Section 117.140, Continuous Demonstration of Compliance

The commission proposes a new §117.140 that incorporates the rule language in the existing §117.213, relating to continuous demonstration of compliance, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.140(a) incorporates the totalizing fuel flow meter requirements and alternative provisions from existing §117.211(a), (a)(1)(A), and (a)(2). Proposed new §117.140(b) incorporates the rule language from existing §117.213(b) concerning O_2 monitors. In addition, existing §117.213(b)(1)(B)(i) requires O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, and clause (ii) requires O_2 monitors on process heaters greater than or equal to 200 MMBtu/hr except as provided in §117.213(f). Because existing §117.213(b)(1)(B)(i) and (ii) are overlapping requirements, the proposed new §117.140(b)(1)(B) incorporates both existing §117.213(b)(1)(B)(i) and (ii) into a single requirement for O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, except as provided in subsection (f).

The commission proposes a new §117.140(c) incorporating the rule language from existing §117.213(c), regarding requirements for NO_x monitors, applicable to the Beaumont-Port Arthur ozone nonattainment area. In addition, the reference in existing §117.213(c)(3)(C)(ii) to §117.113(f) is revised in proposed new §117.140(c)(3)(C)(ii) to reference proposed new §117.8110(b) because the applicable provisions in §117.113(f) are proposed to be incorporated in new §117.8110.

The commission proposes a new §117.140(d), concerning CO monitoring requirements. The commission is concurrently proposing a new §117.8120 that incorporates the CO monitoring methods in the existing §117.213(d)(1) - (4). Therefore, the proposed new §117.140(d) omits the existing CO monitoring methods specified in §117.213(d)(1) - (4) and references proposed new §117.8120.

The commission proposes a new §117.140(e), concerning requirements for CEMS. The commission is concurrently proposing a new §117.8100(a) that incorporates the general requirements for CEMS in the existing §117.213(e)(1) - (3), (5), and (6). Existing §117.213(e)(4) is a region-specific requirement applicable only in the Houston-Galveston-Brazoria ozone nonattainment area. Therefore, the proposed new §117.140(e) omits existing §117.213(e)(1) - (6) and references proposed new §117.8100(a).

The commission proposes a new §117.140(f), concerning requirements for PEMS. Proposed new §117.140(f)(1) incorporates rule language from existing §117.213(f)(1). The commission is concurrently proposing a new §117.8100(b) that incorporates the general requirements for PEMS in the existing §117.213(f)(2) - (7). Therefore, the proposed new §117.140(f) omits existing §117.213(f)(2) - (7) and proposed new §117.140(f)(2) references proposed new §117.8100(b).

The commission proposes a new §117.140(g) concerning testing requirements for stationary gas engines. The commission is concurrently proposing a new §117.8140(a) that incorporates the engine testing requirements in existing §117.213(g)(1). Therefore, the proposed new §117.140(g) omits existing §117.213(g)(1) and references proposed new §117.8140(a). In addition, existing §117.213(g)(2) requires that engines that use a chemical reagent for reduction of NO_x must be monitored for NO_x in accordance with existing §117.213(c)(1)(E) and must comply with applicable requirements for CEMS and PEMS. Existing §117.213(c)(1)(E) and proposed new §117.140(c)(1)(E) require that the owner or operator of any unit that uses a chemical reagent for NO_x control install, calibrate, maintain, and operate a CEMS or PEMS to monitor NO_x. Also, the applicable requirements for CEMS or PEMS in existing §117.213(e) or (f), or proposed new §117.140(e) or (f) automatically apply to any CEMS or PEMS required by the section. Therefore, because the existing §117.213(g)(2) is redundant, the commission is not proposing to incorporate §117.213(g)(2) into the proposed new §117.140(g).

Finally, the commission proposes new §117.140(h) - (m) that incorporates the rule language from existing §117.213(h) - (m) applicable to the Beaumont-Port Arthur ozone nonattainment area.

Section 117.145, Notification, Recordkeeping, and Reporting Requirements

The commission proposes new §117.145 that incorporates the rule language in existing §117.219, concerning notification, recordkeeping, and reporting. Proposed new §117.145(a) - (f) incorporate the rule language from existing §117.219(a) - (f) requirements applicable to the Beaumont-Port Arthur ozone nonattainment area. In addition, for proposed new §117.145(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.145(a). The commission is soliciting comments on this specific change to the language in existing §117.219(a). The commission is also soliciting comments on whether the reference to 30 TAC §101.222 should be removed.

Section 117.150, Initial Control Plan Procedures

The commission proposes new §117.150 that incorporates the rule language in existing §117.209, concerning initial control plan procedures applicable to the Beaumont-Port Arthur ozone nonattainment area.

Section 117.152, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.152 that incorporates the requirements in the existing §117.215, relating to final control plan procedures for RACT, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.152(a) - (c) incorporates the provisions in the existing §117.215(a) - (c). Proposed new §117.152(a)(2)(A) and (B) incorporate the rule language from existing §117.215(a)(2)(A) and (B). Proposed new §117.152(a)(2)(C) incorporates the rule language from existing §117.215(a)(2)(D), and proposed new §117.152(a)(2)(D) incorporates the rule language from existing §117.215(a)(2)(C). Proposed new §117.152(a)(2)(E) incorporates the rule language from existing §117.215(a)(2)(E). In addition, for proposed new §117.152(a)(6)(B), concerning the information required in the final control plan for gas turbines with a megawatt (MW) rating less than 10 MW, the commission is proposing to change the word "ten" to the numeral "10.0" because this is the appropriate exemption MW rating from existing §117.205(h)(7) and proposed new §117.103(b)(6).

Proposed new §117.152 does not include existing §117.215(d), concerning the requirement to submit the control plan electronically and on hard copy using forms provided by the executive director. Existing §117.215 and proposed new §117.152 specify the content requirements for the control plans. Therefore, a mandatory format for the control plan information is not necessary. Finally, proposed new §117.152(d) incorporates rule language in existing §117.215(e).

Section 117.154, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.154 that incorporates the rule language in existing §117.216, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.154(a) incorporates the rule language in existing §117.216(a). Proposed new §117.154(a)(1)(A) consists of the provisions in existing §117.216(a)(1)(A). Proposed new §117.154(a)(1)(B) consists of the provisions in existing §117.216(a)(1)(D). Proposed new §117.154(a)(1)(C) and (D) consist of the provisions in existing §117.216(a)(1)(B) and (C), respectively. The commission proposes a new §117.154(a)(2) - (5) that incorporates the rule language from existing §117.216(a)(2) - (5). The commission also proposes a new §117.154(b) and (c) that incorporate the rule language in existing §117.216(b) and (c), respectively. In addition, proposed new §117.154(b)(2)(A) and (B) exclude the references to proposed new §117.123(k) or (l) because there is no heat input information specified in these subsections in either the existing §117.223 or proposed new §117.123.

Section 117.156, Revision of Final Control Plan

The commission proposes a new §117.156 that incorporates the rule language in existing §117.217, concerning revisions of final control plans.

DIVISION 2, DALLAS-FORT WORTH OZONE NONATTAINMENT AREA MAJOR SOURCES

The commission proposes a new Chapter 117, Subchapter B, Division 2, entitled Dallas-Fort Worth Ozone Nonattainment Area Major Sources, that incorporates the rule language in the exist-

ing Chapter 117, Subchapter B, Division 3 applicable to major industrial, commercial, and institutional sources in the Dallas-Fort Worth ozone nonattainment area.

Section 117.200, Applicability

The commission proposes a new §117.200 that incorporates the applicability rule language in existing §117.201 applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.200(a) incorporates the applicability rule language in existing §117.201(1) - (3). In addition, the commission proposes a new §117.200(b) specifying that proposed new Chapter 117, Subchapter B, Division 2 will no longer apply to any units that are subject to the emission specifications in proposed new §117.410 and located at any major stationary source of NO_x within Collin, Dallas, Denton, and Tarrant Counties after the compliance dates in proposed new §117.9030. The emissions specifications in proposed §117.410 and all other associated requirements in the proposed new Subchapter B, Division 4, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, would supersede the requirements of Subchapter B, Division 2. Therefore, the commission proposes new §117.200(b) to avoid overlapping requirements from the two separate divisions.

Section 117.203, Exemptions

The commission proposes a new §117.203, relating to general exemptions, that incorporates the exemptions in the existing §117.203 applicable to the Dallas-Fort Worth ozone nonattainment area. The commission proposes a new §117.203(a), relating to general exemptions, that incorporates the exemptions in the existing §117.203(a). Proposed new §117.203(a)(1) - (7) incorporates the rule language in existing §117.203(a)(1) - (7). Proposed new §117.203(a)(8) incorporates the exemption of existing §117.203(a)(8)(B). Proposed new §117.203(a)(9) incorporates the exemption in existing §117.203(a)(10).

In addition, the commission proposes a new §117.203(b) and (c) to incorporate exemptions from existing §117.205 and §117.206. This proposed change would consolidate the applicable exemptions for the Dallas-Fort Worth ozone nonattainment area under a single section. Proposed new §117.203(b)(1) - (9) incorporates the exemptions in the existing §117.205(h)(1) - (9), concerning exemptions for RACT, applicable to the Dallas-Fort Worth ozone nonattainment area. The commission proposes a new §117.203(b)(10) consisting of the provisions in the existing §117.205(h)(10)(B).

The commission proposes a new §117.203(c), relating to attainment demonstration exemptions, that incorporates the exemptions in existing §117.206(g)(2) applicable to the Dallas-Fort Worth ozone nonattainment area. The exemption in existing §117.206(g)(1), for boilers or process heaters with a maximum rated capacity less than 40 MMBtu/hr, is redundant because the general exemption in proposed new §117.203(a)(2) is identical.

Section 117.205, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.205 that incorporates rule language in existing §117.205, relating to emission specifications for RACT, applicable to the Dallas-Fort Worth ozone nonattainment area.

The commission proposes a new §117.205(a) - (c) consisting of the provisions in the existing §117.205(a) - (c). In addition, the language regarding initial control plans in existing §117.205(a)(1)(B) is omitted in the proposed new §117.205(a)(1)(B) because the requirement for initial control plans was not applicable in the Dallas-Fort Worth ozone nonattainment area. Also, the commission proposes a new equation in §117.205(b)(6) that incorporates the calculation for the NO_x emission limit for gas-fired boilers and process heaters using hydrogen-rich fuel in the existing §117.205(b)(6). The proposed new equation in §117.205(b)(6) is identical in content to the existing equation in existing §117.205(b)(6). The proposed new §117.205(b)(6) presents the equation in a format consistent with other figures in Chapter 117 and provides a written description of all the terms used in the equation.

The commission proposes a new §117.205(d) consisting of the rule language in the existing §117.205(d) and (d)(2). Proposed new §117.205(e) and (f) incorporate the rule language in existing §117.205(f) and (g). As previously indicated in this preamble, the exemptions in existing §117.205(h) applicable to the Dallas-Fort Worth ozone nonattainment area are proposed to be incorporated in proposed new §117.203(b).

Section 117.210, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.210 that incorporates the rule language in the existing §117.206, relating to emission specifications for attainment demonstration, applicable to the Dallas-Fort Worth ozone nonattainment area.

The commission proposes a new §117.210(a), relating to NO_x emission specifications, that incorporates the specifications in existing §117.206(b). Proposed new §117.210(a)(1) and (2) incorporate the emission specifications from existing §117.206(b)(1) and (2). The emission specifications for stationary gas-fired internal combustion engines in existing §117.206(b)(3) are proposed to be incorporated in proposed new Subchapter B, Division 4, §117.410(a). These emission specifications are applicable to the nine-county Dallas-Fort Worth eight-hour ozone nonattainment area as a part of the commission's IOP demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area. Because the emission specifications in existing §117.206(b)(3) apply to the Dallas-Fort Worth eight-hour ozone nonattainment area, proposed new Subchapter B, Division 4 is the most appropriate location for the emission specifications.

The commission proposes a new §117.210(b), relating to NO_x averaging time, that incorporates the rule language in existing §117.206(d)(1). Proposed new §117.210(b)(1) incorporates the requirements in existing §117.206(d)(1)(A), and proposed new §117.210(b)(2) incorporates the requirements in existing §117.206(d)(1)(B).

The commission proposes a new §117.210(c), relating to related emissions, that incorporates the rule language in existing §117.206(e). Proposed new §117.210(c)(1) and (2) incorporate the CO and ammonia emissions specifications in the existing §117.206(e)(1) and (2). Proposed new §117.210(c)(3) incorporates the provisions regarding correction of CO emissions in existing §117.206(e)(3) and (3)(B). The commission also proposes a new §117.210(c)(4) that incorporates the rule language regarding applicability of the CO emission specifications from existing §117.206(e)(4) and (4)(A). Finally, the commission proposes a new §117.210(d) that incorporates the rule language regarding compliance flexibility from the existing §117.206(f)(1) - (3). As previously indicated in this preamble, the exemptions in existing §117.206(g) applicable to the Dallas-Fort Worth ozone nonattainment area are proposed to be incorporated in proposed new §117.203(c).

Section 117.215, Alternative Plant-Wide Emission Specifications

The commission proposes a new §117.215 that incorporates the rule language in existing §117.207, relating to alternative plant-wide emission specifications, applicable to the Dallas-Fort Worth zone nonattainment area. Proposed new §117.215(a) - (f) incorporate the rule language in existing §117.207(a) - (f).

Proposed new §117.215(g) incorporates the rule language from existing §117.207(g). In addition, existing §117.207(g)(1) - (3) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new formulas are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.215(g)(1) incorporates the calculation for the allowable NO_x emission rate for each affected boiler and process heater in the existing §117.207(g)(1). The proposed new equation in §117.215(g)(2) incorporates the calculation for the allowable NO_x emission rate for each affected stationary internal combustion engine in the existing §117.207(g)(2). The commission also proposes adding new equations to §117.215(g)(3) that incorporate the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.207(g)(3). The proposed new §117.215(g)(3) presents the equation for determining the plant-wide emission specification for stationary gas turbines from the required calculation in existing §117.207(g)(3). Proposed new §117.215(g)(3) also includes a new equation in §117.215(g)(3) that incorporates the existing equation for calculating the in-stack NO_x concentration term used in calculating the plant-wide emission specification.

Finally, the commission proposes a new §117.215(h) that incorporates the rule language from existing §117.207(h), and a new §117.215(i) that incorporates the rule language from existing §117.207(i) and (i)(2).

Section 117.223, Source Cap

The commission proposes a new §117.223 that incorporates the rule language in the existing §117.223, relating to source cap, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.223(a) - (k) incorporate the rule language in existing §117.223(a) - (k). In addition, the commission proposes new equations in proposed new §117.223(b) that incorporate the equations in existing §117.223(b) to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new equations in §117.223 include only the information applicable to the Dallas-Fort Worth ozone nonattainment area. The proposed new equation in §117.223(b)(1) incorporates the equation for the rolling 30-day average emission cap in the existing §117.223(b)(1). The proposed new equation in §117.223(b)(2) incorporates the equation for the rolling 30-day average NO_x emission cap in the existing §117.223(b)(2).

In addition, the commission proposes to revise the language regarding initial control plans in proposed new §117.223(i) and (j). As discussed later in this preamble, the commission is not proposing a new section for the Dallas-Fort Worth ozone nonattainment area with the requirements for initial control plans from existing §117.209. Therefore, the commission proposes to change the language in the proposed new §117.223(i) and (j) to reference final control plans for RACT instead of initial control plans. The commission is soliciting comment on this specific change proposed for §117.223(i) and (j). Finally, for proposed new §117.223(k), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions)." This proposed change is necessary to update the rule to current terminology used by the commission.

Section 117.225, Alternative Case Specific Specifications

The commission proposes a new §117.225 that incorporates the rule language in the existing §117.221, relating to alternative case specific specifications, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.225(a) and (b) incorporate the rule language in the existing §117.221(a) and (b). In addition, proposed new §117.225(a) omits the existing §117.221(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.230, Operating Requirements

The commission proposes a new §117.230 that incorporates the rule language in existing §117.208, relating to operating requirements, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.230(a) - (d) incorporate the rule language in existing §117.208(a) - (d). In addition, the commission is concurrently proposing a new §117.8140(b) that incorporates the engine testing requirements in the existing §117.208(d)(7). Therefore, the engine testing requirements in existing §117.208(d)(7) have been omitted from the proposed new §117.230(d)(7) and replaced with a reference to the proposed new §117.8140(b).

Section 117.235, Initial Demonstration of Compliance

The commission proposes a new §117.235 that incorporates the rule language in existing §117.211, relating to initial demonstration of compliance, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.235(a) - (d) incorporate the rule language in existing §117.211(a) - (d). The commission is concurrently proposing a new §117.8000 that incorporates the requirements in the existing §117.211(e). Therefore, the commission proposes a new §117.235(e) that replaces specific requirements from existing §117.211(e) with a reference to the proposed new §117.8000. In addition, while existing §117.211(a) and proposed new §117.235(a) specify that units that inject urea or ammonia for NO_x control must be tested for ammonia emissions, existing §117.211(e) does not specify the methods to be used for the required ammonia initial demonstration of compliance. Proposed new §117.8000 includes a requirement that specifies the methods required for ammonia testing during the initial demonstration of compliance. Specific discussion related to this proposed change is included in the section by section discussion associated with proposed new §117.8000.

Proposed new §117.235(f) incorporates the rule language from existing §117.211(f), regarding initial demonstration of compliance for units operating with CEMS or PEMS. Finally, the commission is concurrently proposing a new §117.8010 that incorporates the report content requirements in the existing §117.211(g). Therefore, the proposed new §117.235(g) omits the compliance stack reports content requirements and references proposed new §117.8010.

Section 117.240, Continuous Demonstration of Compliance

The commission proposes a new §117.240 that incorporates the rule language in the existing §117.213, relating to continuous

demonstration of compliance, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.240(a) incorporates the totalizing fuel flow meter requirements and alternative provisions from existing §117.211(a), (a)(1)(A), and (a)(2). Proposed new §117.240(b) incorporates the rule language from existing §117.213(b) concerning O_2 monitors. In addition, existing §117.213(b)(1)(B)(i) requires O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, and clause (ii) requires O_2 monitors on process heaters greater than or equal to 200 MMBtu/hr except as provided in §117.213(f). Because existing §117.213(b)(1)(B)(i) and (ii) are overlapping requirements, the proposed new §117.240(b)(1)(B) incorporates both existing §117.213(b)(1)(B)(i) and (ii) into a single requirement for O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, except as provided in subsection (f).

The commission proposes a new §117.240(c) incorporating the rule language from existing §117.213(c), regarding requirements for NO_x monitors, applicable to the Dallas-Fort Worth ozone nonattainment area. In addition, the reference in existing §117.213(c)(3)(C)(ii) to §117.113(f) is revised in proposed new §117.240(c)(3)(C)(ii) to reference proposed new §117.8110(b) because the applicable provision in §117.113(f) if proposed to be incorporated in new §117.8110.

The commission proposes a new §117.240(d), concerning CO monitoring requirements. The commission is concurrently proposing a new §117.8120 that incorporates the CO monitoring methods in the existing §117.213(d)(1) - (4). Therefore, the proposed new §117.240(d) omits the existing CO monitoring methods specified in §117.213(d)(1) - (4) and references proposed new §117.8120.

The commission proposes a new §117.240(e), concerning requirements for CEMS. The commission is concurrently proposing a new §117.8100(a) that incorporates the general requirements for CEMS in the existing §117.213(e)(1) - (3), (5), and (6). Existing §117.213(e)(4) is a region-specific requirement applicable only in the Houston-Galveston-Brazoria ozone nonattainment area. Therefore, the proposed new §117.240(e) omits existing §117.213(e)(1) - (6) and references proposed new §117.8100(a).

The commission proposes a new §117.240(f), concerning requirements for PEMS. Proposed new §117.240(f)(1) incorporates rule language from existing §117.213(f)(1). The commission is concurrently proposing a new §117.8100(b) that incorporates the general requirements for PEMS in the existing §117.213(f)(2) - (7). Therefore, the proposed new §117.240(f) omits existing §117.213(f)(2) - (7) and proposed new §117.240(f)(2) references proposed new §117.8100(b).

The commission proposes a new §117.240(g) concerning testing requirements for stationary gas engines. The commission is concurrently proposing a new §117.8140(a) that incorporates the engine testing requirements in existing §117.213(g)(1). Therefore, the proposed new §117.240(g) omits existing §117.213(g)(1) and references proposed new §117.8140(a). In addition, existing §117.213(g)(2) requires that engines that use a chemical reagent for reduction of NO_x must be monitored for NO_x in accordance with existing §117.213(c)(1)(E) and must comply with applicable requirements for CEMS and PEMS. Existing §117.213(c)(1)(E) and proposed new §117.240(c)(1)(E) require that the owner or operator of any unit that uses a chemical reagent for NO_x control install, calibrate, maintain, and operate a CEMS or PEMS to monitor NO_x. Also, the applicable requirements for CEMS or PEMS in existing §117.213(e) or (f), or proposed new §117.240(e) or (f) automatically apply to any CEMS or PEMS required by the section. Therefore, because the existing §117.213(g)(2) is redundant, the commission is not proposing to incorporate §117.213(g)(2) into the proposed new §117.240(g).

Finally, the commission proposes new §117.240(h) - (m) that incorporates the rule language from existing §117.213(h) - (m) applicable to the Dallas-Fort Worth ozone nonattainment area.

Section 117.245, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.245 that incorporates the rule language in the existing §117.219, relating to notification, recordkeeping, and reporting requirements. Proposed new §117.245(a) - (f) incorporate the rule language from existing §117.219(a) - (f) requirements applicable to the Dallas-Fort Worth ozone nonattainment area. In addition, for proposed new §117.245(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.245(a). The commission is soliciting comments on this specific change to the language in existing §117.219(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed.

Section 117.252, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.252 that incorporates the rule language in the existing §117.215, relating to final control plan procedures for RACT, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.252(a) - (c) incorporates the provisions in the existing §117.215(a) - (c). Proposed new §117.252(a)(2)(A) and (B) incorporate the rule language from existing §117.215(a)(2)(A) and (B). Proposed new §117.252(a)(2)(C) incorporates the rule language from existing §117.215(a)(2)(D), and proposed new §117.252(a)(2)(D) incorporates the rule language from existing §117.215(a)(2)(C). Proposed new §117.252(a)(2)(E) incorporates the rule language from existing §117.215(a)(2)(E). In addition, for proposed new §117.252(a)(6)(B), concerning the information required in the final control plan for gas turbines with a MW rating less than 10 MW, the commission is proposing to change the word "ten" to the numeral "10.0" because this is the appropriate exemption MW rating from existing §117.205(h)(7) and proposed new §117.203(b)(7).

Proposed new §117.252 does not include existing 117.215(d), concerning the requirement to submit the control plan electronically and on hard copy using forms provided by the executive director. Existing §117.215 and proposed new §117.252 specify the content requirements for the control plans. Therefore, a mandatory format for the control plan information is not necessary. Proposed new §117.252(d) incorporates the rule language in existing §117.215(e).

In addition, the commission is not proposing a new section corresponding to the existing §117.209, concerning initial control plan procedures for RACT, for the proposed new Subchapter B, Division 2, Dallas-Fort Worth Ozone Nonattainment Area Major Sources. The requirement in §117.209 to submit an initial control plan was applicable only to the Beaumont-Port Arthur and Houston-Galveston-Brazoria ozone nonattainment areas.

Section 117.254, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.254 that incorporates the rule language in existing §117.216, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.254(a) incorporates the rule language in existing §117.216(a). Proposed new §117.254(a)(1)(A) consists of the provisions in existing §117.216(a)(1)(A). Proposed new §117.254(a)(1)(B) consists of the provisions in existing §117.216(a)(1)(D). Proposed new §117.254(a)(1)(C) and (D) consist of the provisions in existing §117.216(a)(1)(B) and (C), respectively.

The commission proposes a new §117.254(a)(2) - (5) that incorporates the rule language from existing §117.216(a)(2) - (5). Proposed new §117.254(b) and (c) incorporate the rule language in existing §117.216(b) and (c), relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Dallas-Fort Worth ozone nonattainment area. In addition, proposed new §117.254(b)(2)(A) and (B) exclude the references to proposed new §117.223(k) or (l) because there is no heat input information specified in these subsections in either the existing §117.223 or proposed new §117.223.

Section 117.256, Revision of Final Control Plan

The commission proposes a new §117.256 that incorporates the rule language in existing §117.217, concerning revisions of final control plans.

DIVISION 3, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

The commission proposes a new Chapter 117, Subchapter B, Division 3, entitled Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment Area Major Sources, that incorporates the rule language in the existing Chapter 117, Subchapter B, Division 3 applicable to major industrial, commercial, and institutional sources in the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.300, Applicability

The commission proposes a new §117.300 that incorporates the applicability rule language in the existing §117.201 applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.303, Exemptions

The commission proposes a new §117.303 that incorporates the exemptions in the existing §117.203 and §117.205 applicable to the Houston-Galveston-Brazoria ozone nonattainment area. The proposed new §117.303 consolidates the exemptions applicable to the Houston-Galveston-Brazoria ozone nonattainment area under a single section. Proposed new §117.303(a), concerning general exemptions, incorporates exemptions in existing §117.203(a)(1) - (9), (11), and (12). In addition, the provision in existing §117.203(b), regarding revocation of exemptions in existing §117.203(a)(1), (2), (7), and (8), is proposed to be merged with the applicable exemptions for clarity. Proposed new §117.303(a)(1) incorporates the exemption in the existing §117.203(a)(1) and the revocation of exemption language from §117.203(b). Proposed new §117.303(a)(2) incorporates the exemptions in the existing §117.203(a)(2) and the revocation of exemption language from §117.203(b). Proposed new §117.303(a)(3) - (6) incorporate the exemptions in the existing §117.203(a)(3) - (6). The commission proposes a new §117.303(a)(7) that incorporates the exemption in the existing §117.203(a)(7) and the revocation of exemption language from §117.203(b). Proposed new §117.303(a)(8) incorporates the exemptions in the existing §117.203(a)(8)(A) and the revocation of exemption language from §117.203(b). Proposed new §117.303(a)(9) incorporates the exemptions in existing §117.203(a)(9). Proposed new §117.303(a)(10) and (11) incorporate the exemptions in the existing §117.203(a)(11) and (12), respectively. Finally, the commission proposes a new §117.303(b)(1) - (10) that incorporates the exemptions associated with RACT in the existing §117.205(h)(1) - (10)(A).

Section 117.305, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.305 that incorporates the specifications in the existing §117.205, relating to emission specifications for RACT, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

The commission proposes a new §117.305(a) - (c) consisting of the provisions in the existing §117.205(a) - (c). In addition, the commission proposes a new equation in §117.305(b)(6) that incorporates the calculation for the NO_x emission limit for gas-fired boilers and process heaters using hydrogen-rich fuel in the existing §117.205(b)(6). The proposed new equation in §117.305(b)(6) is identical in content to the existing equation in existing §117.205(b)(6). The proposed new §117.305(b)(6) presents the equation in a format consistent with other figures in Chapter 117 and provides a written description of all the terms used in the equation.

The commission proposes a new §117.305(d) consisting of the rule language in the existing §117.205(d) and (d)(1). Proposed new §117.305(e) and (f) incorporate the rule language in existing §117.205(f) and (g). Proposed new §117.305(g) incorporates the rule language in existing §117.205(i) and (i)(2).

Section 117.310, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.310 that incorporates the specifications in the existing §117.206, relating to emission specifications for attainment demonstrations, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

The commission proposes a new §117.310(a) that incorporates the emission specifications in the existing §117.206(c). The catchline for subsection (a) is also proposed to be changed to Emission specifications for the Mass Emission Cap and Trade Program to more accurately reflect the purpose of the emission specifications in combination with the Mass Emission Cap and Trade Program in Chapter 101, Subchapter H, Division 3. The commission proposes a new §117.310(a)(9)(D) and (E) that incorporate and reformat the specifications for diesel engines from the existing §117.206(c)(9)(D). Proposed new §117.310(a)(9)(D) includes the emission specification from existing §117.206(c)(9)(D)(i) and proposed new §117.310(a)(9)(E) includes the emissions specifications from the existing §117.206(c)(9)(D)(ii).

The commission proposes a new §117.310(b) that incorporates the rule language regarding NO_x averaging time in the existing §117.206(d)(2).

The commission proposes a new §117.310(c), concerning related emissions, that incorporates the rule language in existing §117.206(e) applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.310(c)(1) - (3)

incorporate the rule language in existing §117.206(e)(1) - (3). Proposed new §117.310(c)(4)(A) and (B) incorporate the rule language in the existing §117.206(e)(4) and (4)(B) and (C), concerning the applicability of the CO emission specifications. In addition, for proposed new §117.310(c)(2), the commission proposes to change the emissions specification for ammonia from the word "ten" to the numeral "10." Consistent with EPA guidance, the commission normally enforces emission test and monitoring results to the same significant figures as the emission specifications. Using the numeral "10" for the ammonia emission specification would ensure consistent enforcement of the emission specification.

The commission proposes a new §117.310(d) that incorporates the rule language in existing §117.206(f), relating to compliance flexibility. Proposed new §117.310(d)(1) - (3) incorporate the rule language from existing §117.206(f)(2) - (4).

The commission proposes a new §117.310(e) that incorporates the rule language in existing §117.206(h), relating to prohibition of circumvention. Finally, proposed new §117.310(f) incorporates the rule language in existing §117.206(i), relating to operating restrictions.

Section 117.315, Alternative Plant-Wide Emission Specifications

The commission proposes a new §117.315 that incorporates the rule language in existing §117.207, relating to alternative plant-wide emission specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

Proposed new §117.315(a) - (f) incorporate the rule language in existing §117.207(a) - (f), relating to compliance with plant-wide emission specifications.

Proposed new §117.315(g) incorporates the rule language from existing §117.207(g). In addition, existing §117.207(g)(1) - (3) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed mathematical formulas are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.315(g)(1) incorporates the calculation for the allowable NO_x emission rate for each affected boiler and process heater in the existing §117.207(g)(1). The proposed new equation in §117.315(g)(2) incorporates the calculation for the allowable NO_x emission rate for each affected stationary internal combustion engine in the existing §117.207(g)(2). The commission also proposes adding new equations to §117.315(g)(3) that incorporate the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.207(g)(3). The proposed new §117.315(g)(3) presents the equation for determining the plant-wide emission specification for stationary gas turbines from the required calculation in existing §117.207(g)(3). Proposed new §117.315(g)(3) also includes a new equation in §117.315(g)(3) that incorporates the existing equation for calculating the in-stack NO_x concentration term used in calculating the plant-wide emission specification.

The commission proposes a new §117.315(h) that incorporates the rule language in the existing §117.207(h), relating to gas-fired boilers or process heaters using fuel that contains more than 50% hydrogen by volume. Proposed new §117.315(i) that incorporates the rule language in existing §117.207(j), concerning applicability of the section after the compliance dates for emission specifications for attainment demonstration applicable in the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.320, System Cap

The commission proposes a new §117.320 that incorporates the rule language in the existing §117.210, concerning system cap requirements for electric generation facilities in the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.320(a) - (k) incorporate the rule language in existing §117.210(a) - (k).

Also, for proposed new §117.320(b), the commission is proposing to revise the language in existing §117.210(b) that specifies "Each EGF that is subject to the NO_x emission rates of §117.206 . . .." Proposed new §117.320(b) specifies "Each EGF that is subject to §117.310 . . .." While compliance with the emission specifications in existing §117.206(c) is achieved through the Mass Emission Cap and Trade Program and an individual unit may not necessarily be required to meet the applicable emission specification in §117.206(c), an electric generating facility (EGF) subject to existing §117.206(c) is still required to comply with the system cap in existing §117.210. This proposed change for proposed new §117.320(b) would clarify the commission's intent and avoid misinterpretation of the rule requirements for an EGF subject to the Mass Emission Cap and Trade Program.

In addition, the commission proposes new equations in §117.320(c)(1) - (3) that incorporate the equations in existing §117.210(c)(1) - (3). The proposed new equations in §117.320(c)(1) - (3) present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equations. The proposed new equation in §117.320(c)(1) incorporates the equation for the rolling 30-day average NO_x emission cap during the months of July, August, and September in the existing §117.210(c)(1). Also, the commission proposes to revise variable (C) in the term H_i for §117.320(c)(1). The commission proposes to add the language "after the end of the adjustment period as defined in §101.350 of this title (relating to Definitions)" to the definition of variable (C). This proposed change is to clarify that the allowance for the adjustment period described in variable (D) also applies in variable (C). The commission is soliciting comment on this specific change to variable (C) in §117.320(c)(1). The proposed new equation in §117.320(c)(2) incorporates the equation for the rolling 30-day average NO_x emission cap during months other than July, August, and September in the existing §117.210(c)(2). Consistent with the change proposed for proposed new §117.320(c)(1), the commission proposes to revise variable (C) in the term H_i for §117.320(c)(2). The commission proposes to add the language "after the end of the adjustment period as defined in §101.350 of this title (relating to Definitions)" to the definition of variable (C). This proposed change is to clarify that the allowance for the adjustment period described in variable (D) also applies in variable (C). The commission is soliciting comment on this specific change to variable (C) in §117.320(c)(2). The proposed new equation in §117.320(c)(3) incorporates the equation for the NO_x maximum daily emission cap in the existing §117.210(c)(3).

For proposed new §117.320(e), the language in existing §117.210(e)(3)(B) that references existing §117.213(f) is proposed to be changed to reference proposed new §117.8100(b), because the applicable rule language from existing §117.213(f) is proposed to be incorporated in a proposed new §117.8100.

Finally, for proposed new §117.320(k), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions)." This proposed change is necessary to update the rule to current terminology used by the commission.

Section 117.323, Source Cap

The commission proposes a new §117.323 that incorporates the rule language in existing §117.223, relating to source cap, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.323(a) and (b) incorporate the rule language in existing §117.223(a) and (b). In addition, the commission proposes new equations in proposed new §117.323(b) that incorporate the equations in existing §117.223(b) to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equations. The proposed new equations in §117.323 include only the provisions applicable to the Houston-Galveston-Brazoria ozone nonattainment area. The proposed new equation in §117.323(b)(1) incorporates the equation for the rolling 30-day average emission cap in the existing §117.223(b)(1). The proposed new equation in §117.323(b)(2) incorporates the equation for the rolling 30-day average NO_x emission cap in the existing §117.223(b)(2).

The commission proposes new §117.323(c) - (g) that incorporate the rule language in existing §117.223(c) - (g). Proposed new §117.323(h) incorporates the rule language in existing §117.223(i) and (i)(1). Proposed new §117.323(i) - (k) incorporate the rule language in existing §117.223(j) - (l), respectively. Finally, for proposed new §117.323(j), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions)." This proposed change is necessary to update the rule to current terminology used by the commission.

Section 117.325, Alternative Case Specific Specifications

The commission proposes a new §117.325 that incorporates the rule language in the existing §117.221, relating to alternative case specific specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.325(a) and (b) incorporate the provisions in existing §117.221(a) and (b). In addition, proposed new §117.325(a) omits the existing §117.221(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.330, Operating Requirements

The commission proposes a new §117.330 that incorporates the rule language in existing §117.208, relating to operating requirements, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.330(a) - (d) incorporate the rule language in existing §117.208(a) - (d). In addition, the commission is concurrently proposing a new §117.8140(b) that incorporates the engine testing requirements in the existing §117.208(d)(7). Therefore, the engine testing requirements in existing §117.208(d)(7) have been omitted from the proposed new §117.330(d)(7) and replaced with a reference to the proposed new §117.8140(b).

Section 117.335, Initial Demonstration of Compliance

The commission proposes a new §117.335 that incorporates the rule language in existing §117.211, relating to initial demonstration of compliance, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.335(a) - (d) incorporate the rule language in existing §117.211(a) - (d). Also, for proposed new §117.335(a), the commission is proposing to revise the language in existing §117.211(a) that specifies ". . . all units which are subject to the emission limitations of this division . . ." must be tested. Proposed new §117.335(a) specifies ". . . any unit subject to §117.305 or §117.310 of this title . . ." must be tested. While compliance with the emission specifications in existing §117.206(c) is achieved through the Mass Emission Cap and Trade Program and an individual unit may not necessarily be required to meet the applicable emission specification in §117.206(c), units subject to existing §117.206(c) are still required to be tested according to existing §117.211. Similarly, for proposed new §117.335(b), the commission proposes to revise the language to specify initial compliance with the requirements of this division instead of initial compliance with the emission limits of this division. These proposed changes for proposed new §117.335(a) and (b) would clarify the commission's intent and avoid misinterpretation of the rule requirements for units subject to the Mass Emission Cap and Trade Program.

The commission is concurrently proposing a new §117.8000 that incorporates the requirements in the existing §117.211(e). Therefore, the commission proposes a new §117.335(e) that replaces specific requirements from existing §117.211(e) with a reference to the proposed new §117.8000. In addition, while existing §117.211(a) and proposed new §117.335(a) specify that units that inject urea or ammonia for NO_x control must be tested for ammonia emissions, existing §117.211(e) does not specify the methods to be used for the required ammonia initial demonstration of compliance. Proposed new §117.8000 includes a requirement that specifies the methods required for ammonia testing during the initial demonstration of compliance. Specific discussion related to this proposed change is included in the section-by-section discussion associated with proposed new §117.8000.

Proposed new §117.335(f) incorporates the rule language from existing §117.211(f), regarding initial demonstration of compliance for units operating with CEMS or PEMS. Finally, the commission is concurrently proposing a new §117.8010 that incorporates the report content requirements in the existing §117.211(g). Therefore, the proposed new §117.335(g) omits the compliance stack reports content requirements and references proposed new §117.8010.

Section 117.340, Continuous Demonstration of Compliance

The commission proposes a new §117.340 that incorporates the rule language and requirements in existing §117.213 and §117.214 applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.340(a) incorporates the rule language concerning totalizing fuel flow meters in existing §117.213(a).

The commission proposes a new §117.340(b) that incorporates the rule language in existing §117.213(b), relating to O_2 monitors. In addition, existing §117.213(b)(1)(B)(i) requires O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, and clause (ii) requires O_2 monitors on process heaters greater than or equal to 200 MMBtu/hr, except as provided in existing §117.213(f). Because existing §117.213(b)(1)(B)(i) and (ii) are overlapping requirements, the proposed new §117.340(b)(1)(B) incorporates both existing §117.213(b)(1)(B)(i) and (ii) into a single requirement for O_2 monitors on process heaters greater than or equal to 100 MMBtu/hr, except as provided in subsection (g).

The commission proposes a new §117.340(c) that incorporates the requirements in the existing §117.213(c), relating to NO_x

monitors. Proposed new §117.340(c)(1)(A) and (B) incorporate the requirements in the existing §117.213(c)(1)(A) and (B). Proposed new §117.340(c)(1)(C) - (H) incorporate the requirements in the existing §117.213(c)(1)(D) - (I).

The commission proposes a new §117.340(c)(2) and (3) that incorporate the requirements in the existing §117.213(c)(2) and (3). In addition, for proposed new §117.340(c)(3), the commission proposes a new §117.340(c)(3)(E) to add an additional option for substitute emissions compliance data during periods when the NO_x monitor is off-line. The proposed new §117.340(c)(3)(E)(i) specifies that for monitor downtime periods less than 24 consecutive hours, the owner or operator shall substitute the maximum block one-hour NO_x emission rate, in pounds per million British thermal units (lb/MMBtu), from the previous 24 operational hours of the monitor. Proposed new §117.340(c)(3)(E)(ii) specifies that for monitor downtime periods equal to or greater than 24 consecutive hours, the owner or operator shall substitute the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 720 operational hours of the monitor. Proposed new §117.340(c)(3)(E)(iii) specifies that if the fuel flow or stack exhaust monitor and the NO_x monitor are simultaneously off-line, the owner or operator shall use the maximum block one-hour NO_x pounds per hour emission rate for the substitute data in the proposed new §117.340(c)(3)(E)(i) and (ii) in lieu of the lb/MMBtu emission rate. The provisions in proposed new §117.340(c)(3)(E) are optional; however, the proposed new data substitution procedures are more consistent with the requirements of the Mass Emissions Cap and Trade Program in the Houston-Galveston-Brazoria ozone nonattainment area. The commission is soliciting comments on this specific change regarding the additional option for data substitution procedures.

The commission proposes a new §117.340(d) that incorporates the rule language and ammonia monitoring requirements in the existing §117.214(a)(1)(D). The proposed §117.340(d) specifies that the owner or operator of units subject to the ammonia emission specifications in the proposed new §117.310(c)(2) shall comply with the ammonia monitoring requirements of the proposed new §117.8130. The specific ammonia monitoring procedures in existing §117.214(a)(1)(D) are incorporated in the proposed new §117.8130.

The commission proposes a new §117.340(e) that incorporates the requirements in the existing §117.213(d) relating to CO monitoring. The specific requirements and method for CO monitoring in the existing §117.213(d)(1) and (2) appear in the proposed new §117.8120, and subsequently have been omitted from the proposed new §117.340(e) and replaced with a reference to the proposed new §117.8120.

The commission proposes a new §117.340(f), concerning requirements for CEMS. The commission is concurrently proposing a new §117.8100(a) that incorporates the general requirements for CEMS in the existing §117.213(e)(1) - (3), (5), and (6). Therefore, proposed new §117.340(f) omits existing §117.213(e)(1) - (3), (5), and (6) and references proposed new §117.8100(a) in proposed new §117.340(f)(1). Proposed new §117.340(f)(2) incorporates the rule language and CEMS requirements in existing §117.213(e)(4) that are specific to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.340(f)(2)(A) incorporates the rule language regarding monitoring of bypass stacks from existing §117.213(e)(4)(A). Proposed new §117.340(f)(2)(B) incorporates the rule language regarding monitoring of exhaust streams that vent to a common stack from existing §117.213(e)(4)(C).

The commission proposes a new §117.340(g) that incorporates the rule language in the existing §117.213(f), relating to requirements for PEMS. Proposed new §117.340(g)(1) incorporates the rule language from existing §117.213(f)(1). The commission is concurrently proposing a new §117.8100(b) that incorporates the general requirements for PEMS in the existing §117.213(f)(2) - (7). Therefore, the proposed new §117.340(g) omits existing §117.213(f)(2) - (7) and proposed new §117.340(g)(2) references proposed new §117.8100(b).

The commission proposes a new §117.340(h) concerning testing requirements for stationary gas engines. For proposed new §117.340(h), the commission is proposing to revise the rule language "stationary gas engine subject to the emission specifications of this division" to specify "stationary gas engine subject to §117.305 of this title." The commission is concurrently proposing a new §117.8140(a) that incorporates the engine testing requirements in existing §117.213(g)(1). Therefore, the proposed new §117.340(h) omits specific testing procedures in existing §117.213(g)(1) and references proposed new §117.8140(a). In addition, proposed new §117.340(h) also specifies that the owner or operator of any stationary internal combustion engines subject to proposed new §117.310 that are not equipped with NO_x CEMS or PEMS shall test the engines for NO_x and CO emissions as specified in proposed new §117.8140(a) and (b). This proposed change incorporates the testing requirements for engines from existing §117.214(b)(2). In addition, as previously indicated in this preamble, the requirement in existing §117.213(g)(2), regarding installation of CEMS or PEMS engines that use a chemical reagent for reduction of NO_x, is redundant and the commission is not proposing to incorporate §117.213(g)(2) into the proposed new §117.340(h).

The commission proposes a new §117.340(i) - (n) that incorporate the rule language in the existing §117.213(h) - (m), respectively. Proposed new §117.340(o) incorporates rule language from existing §117.214(b). Proposed new §117.340(o)(1) incorporates rule language from existing §117.214(b)(1), and proposed new §117.340(o)(2) incorporates the rule language from existing §117.214(b)(3). The commission proposes a new §117.340(p) that incorporates the requirements of the existing §117.214(c), concerning provisions for emission allowances.

The provisions in existing §117.214(a)(1)(A) - (C), concerning monitoring requirements for NO_x, CO, and totalizing fuel flow meters, are redundant with existing requirements in §117.213 and proposed new §117.340. Therefore, existing §117.214(a)(1)(A) - (C) are not proposed to be incorporated in the proposed new §117.340. Similarly, the requirement in existing §117.214(a)(2), concerning run time meters for diesel engines claimed exempt under existing §117.203(a)(6)(D), (11), or (12), is redundant with the requirement in existing §117.213(i) and proposed new §117.340(j). Therefore, existing §117.214(a)(2) is not proposed to be incorporated in the proposed new §117.340.

Section 117.345, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.345 that incorporates the rule language in the existing §117.219, relating to notification, recordkeeping, and reporting requirements, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.345(a) - (f) incorporate the rule language from existing §117.219(a) - (f), respectively. In addition, for proposed

new §117.345(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.345(a). The commission is soliciting comments on this specific change to the language in existing §117.219(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed. Finally, the commission proposes a new §117.345(f)(11) that incorporates the ammonia recordkeeping requirements from existing §117.214(a)(1)(D)(v).

Section 117.350, Initial Control Plan Procedures

The commission proposes a new §117.350 that incorporates the rule language in the existing §117.209, relating to initial control plan procedures, applicable to the Houston-Galveston-Brazoria nonattainment area.

Section 117.352, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.352 that incorporates the requirements in the existing §117.215, relating to final control plan procedures for RACT, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

Proposed new §117.352(a) incorporates the rule language in existing §117.215(a). Proposed new §117.352(a)(2)(A), (B), and (E) incorporate the rule language in existing §117.215(a)(2)(A), (B), and (E), respectively. Proposed new §117.352(a)(2)(C) incorporates the rule language in existing §117.215(a)(2)(D), and proposed new §117.352(a)(2)(D) incorporates the rule language in existing §117.215(a)(2)(C). Proposed new §117.352(a)(3) - (6) incorporate the rule language in existing §117.215(a)(3) - (6), respectively. In addition, for proposed new §117.352(a)(6)(B), concerning the information required in the final control plan for gas turbines with a MW rating less than 10 MW, the commission is proposing to change the word "ten" to the numeral "10.0" because this is the appropriate exemption MW rating from existing §117.205(h)(7) and proposed new §117.303(b)(7).

The commission proposes a new §117.352(b) and (c) that incorporate the rule language in existing §117.215(b) and (c), respectively. Proposed new §117.352 does not include existing 117.215(d), concerning the requirement to submit the control plan electronically and on hard copy using forms provided by the executive director. Existing §117.215 and proposed new §117.352 specify the content requirements for the control plans. Therefore, a mandatory format for the control plan information is not necessary. Finally, the commission proposes a new §117.352(d) that incorporates rule language in existing §117.215(e), relating to report submittal dates.

Section 117.354, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.354 that incorporates the rule language in the existing §117.216, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.354(a) incorporates the rule language in the existing §117.216(a). Proposed new §117.354(a)(1)(A) incorporates the rule language in existing §117.216(a)(1)(E), and proposed new §117.354(a)(1)(B) incorporates the rule language in existing §117.216(a)(1)(C). Existing §117.216(a)(1)(A), (B), and (D) are not applicable to the Houston-Galveston-Brazoria ozone nonattainment area and are not proposed to be incorporated in the proposed new §117.354. Proposed new §117.354(a)(2) - (6) incorporate the rule language from existing §117.216(a)(2) - (6). For proposed new §117.354(a)(5), the commission proposes to remove the language "the emission specification of." As previously discussed in this preamble, this change is necessary to clarify the commission's intent regarding units subject to the Mass Emission Cap and Trade Program.

Existing §117.216(b) is not proposed to be incorporated in the proposed new §117.354 because the source cap option in existing §117.223 is not a compliance option for sources in the Houston-Galveston-Brazoria ozone nonattainment area subject to existing §117.206(c) and the Mass Emission Cap and Trade Program. Finally, the commission proposes a new §117.354(b) that incorporates the rule language in existing §117.216(c), relating to report submittal dates.

Section 117.356, Revision of Final Control Plan

The commission proposes a new §117.356 that incorporates the requirements in the existing §117.217, relating to revisions of final control plans, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

DIVISION 4, DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

The commission is proposing a new Subchapter B, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, that would include new rules applicable to any major stationary ICI sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. The definition of a major source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area is in proposed new §117.10(29) and includes any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit 50 tpy of NO_x. These proposed new rules are one part of the commission's Dallas-Fort Worth eight-hour ozone attainment demonstration and are necessary for the area to demonstrate attainment.

Section 117.400, Applicability

Proposed new §117.400, concerning applicability, specifies that the new Subchapter B, Division 4 applies to the following unit types at major ICI stationary sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area: ICI boilers and process heaters; stationary gas turbines; stationary internal combustion engines; duct burners used in turbine exhaust ducts; lime kilns; metallurgical heat treating furnaces and reheat furnaces; incinerators; glass, fiberglass, and mineral wool melting furnaces; fiberglass and mineral wool curing and forming ovens; natural gas-fired ovens and heaters; natural gas-fired organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying dryers; brick and ceramic kilns; electric arc melting furnaces used in steel production; and lead smelting reverberatory and blast (cupola) furnaces.

Section 117.403, Exemptions

Proposed new §117.403 specifies the unit types, sizes, or uses that would be exempted from the requirements of this division. Units that the unit type, maximum rated capacity, or specific use would be technically or economically infeasible to comply with the specifications or are regulated under another division are exempted from the provisions of this division.

Proposed new §117.403(a) specifies those units exempt from the division, except as specified in proposed new §§117.440(i), 117.445(f)(4) and (9), 117.450, and 117.454. The exceptions to the proposed exemptions are related to monitoring, recordkeeping, and control plan requirements associated with exempted units. Proposed new §117.403(a)(1) specifies that ICI boilers or process heaters with a maximum rated capacity of 2.0 MMBtu/hr or less would be exempted. This exemption level is proposed because units with a maximum rated capacity of 2.0 MMBtu/hr or less are already regulated under existing Subchapter B, Division 1, which is proposed to be incorporated in proposed new Subchapter E, Division 3.

Proposed new §117.403(a)(2) specifies an exemption for heat treating furnaces and reheat furnaces less than 20 MMBtu/hr. This exemption level is consistent with the exemption in existing §117.203(a)(3) for similar sources in the Houston-Galveston-Brazoria area and is proposed for the Dallas-Fort Worth eight-hour ozone nonattainment area due to the low level of NO_x emissions from units of this size and the impracticality of installing and maintaining NO_x controls on such units.

Proposed new §117.403(a)(3) specifies exemptions for flares and incinerators with a maximum rated capacity of 40 MMBtu/hr due to the low level of NO_x emissions from these units and the impracticality of installing and maintaining NO_x controls on such units and is consistent with existing exemptions in the specifications for the Houston-Galveston-Brazoria area of §117.203(a)(4). In addition, proposed new §117.403(a)(3) specifies that pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers are also exempt. This addition is consistent with the existing exemptions in the specifications for the Houston-Galveston-Brazoria area for units that commingle fuel and process chemicals and are not large sources of NO_x emissions.

Proposed new §117.403(a)(4) specifies dryers, heaters, or ovens with a maximum rated capacity of 2.0 MMBtu/hr or less are exempt. This exemption level is proposed due to the relatively small contribution of NO_x emissions from units of this size and the impracticality of installing and maintaining NO_x controls on such units.

Proposed new §117.403(a)(5) specifies dryers, heaters, or ovens fired on fuels other than natural gas are exempt. This exemption is proposed due to the limited number, if any, of these unit types fired on fuels other than natural gas and their insignificant contribution to NO_x levels in the area. Proposed new §117.403(a)(6) specifies that any glass, fiberglass, or mineral wool melting furnaces with a maximum rated capacity of 2.0 MMBtu/hr or less are exempt from the specifications of this division. This exemption level is proposed due to the relatively small contribution to NO_x emissions in the area from units of this size and the impracticality of installing and maintaining NO_x controls on such units.

In addition, the following stationary internal combustion engines and stationary gas turbines would be exempt in the proposed new §117.403(a)(7)(A) - (G): engines and stationary gas turbines used in research and testing; used for purposes of performance verification and testing; used solely to power other engines or gas turbines during startups; used exclusively in emergency situations (except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average); used in response to and during the existence of any officially declared disaster or state of emergency; used directly and exclusively by the owner of operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or used as chemical processing gas turbines. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, would not be eligible for the emergency use exemption in proposed §117.403(a)(7)(D). These exemptions are proposed due to the relatively small NO_x emissions contribution in the area from these sources due to their limited use or the impracticality of using NO_x emissions controls during such limited operating times. The exemptions in proposed new §117.403(a)(7)(A) - (G) are similar to existing exemptions in the Houston-Galveston-Brazoria area.

Proposed new §117.403(a)(8) specifies an exemption for any stationary diesel engine placed into service before June 1, 2007, that operates less than 100 hours per year, based on a rolling 12-month average, and has not been modified, reconstructed, or relocated on or after June 1, 2007. Proposed new §117.403(a)(9) exempts any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, that operates less than 100 hours per year, in other emergency situations, and meets the corresponding emission standard for non-road engines listed in 40 Code of Federal Regulations (CFR) §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. These exemptions are consistent with existing exemptions applicable in the Houston-Galveston-Brazoria ozone nonattainment area for emergency back-up diesel engines and are proposed for the Dallas-Fort Worth eight-hour ozone nonattainment area because of the limited use of emergency back-up diesel engines.

Proposed new §117.403(a)(10) exempts boilers and industrial furnaces that were regulated as existing facilities by the EPA, 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993. This exemption is consistent with existing exemptions applicable in the Houston-Galveston-Brazoria ozone nonattainment area and is necessary to avoid overlapping regulatory requirements for cement kilns regulated by proposed new Chapter 117, Subchapter E, Division 2.

Finally, proposed new §117.403(a)(11) exempts brick or ceramic kilns with a maximum rated capacity less than 5.0 MMBtu/hr. This exemption is proposed due to the relatively small NO_x emissions contribution in the area from these smaller kilns.

The proposed §117.403(b), concerning IOP exemptions, exempts stationary, reciprocating internal combustion engines with a maximum rated capacity of less than 300 horsepower (hp) from the emission specification in proposed new §117.410(a). This exemption is consistent with the current exemption applicable to the engines subject to existing §117.206(b)(3) and is necessary to ensure that engines not previously subject to existing §117.206(b)(3) are inadvertently made subject to the emission specifications in proposed §117.410(a). Proposed new §117.403(b) also specifies that the specifications of §117.410(a) no longer apply to any stationary, reciprocating internal combustion engine subject to the emission specifications of §117.410(b) after the compliance date specified in §117.9030(b). This exemption is proposed to prevent units subject to the 5% IOP emission specifications from being regulated by two overlapping requirements once the more stringent emission specifications in proposed §117.410(b) become applicable.

Section 117.410, Emission Specifications for Eight-Hour Attainment Demonstration

The commission proposes a new section §117.410, relating to Emission Specifications for Eight-Hour Attainment Demonstration. The new §117.410 establishes proposed NO_x emissions specifications for units in the Dallas-Fort Worth eight-hour ozone nonattainment area that would be subject to this rulemaking. Proposed new §117.410(a), concerning emission specifications for increment of progress, incorporates the emissions specifications for gas-fired engines with a maximum capacity greater than 300 hp established under the 5% IOP from the existing one-hour specifications in existing §117.206(b)(3) into the proposed eight-hour attainment demonstration. The 5% IOP specifications in existing §117.206(b)(3) apply to all nine counties in the Dallas-Fort Worth eight-hour ozone nonattainment area and are therefore more consistent with the proposed new Subchapter B, Division 4. The existing emission specifications and rule language from existing §117.206(b)(3) are proposed to be incorporated in proposed new §117.410(a) without change, except for non-substantive changes associated with reformatting and renumbering.

Proposed new §117.410(b) includes the proposed new emission specifications for the Dallas-Fort Worth eight-hour ozone attainment demonstration. Proposed new §117.410(b)(1) specifies a NO_x emission specification for non-utility gas-fired boilers depending on maximum capacity. Gas-fired boilers with a maximum rated capacity equal to or greater than 100 MMBtu/hr would be limited to 0.020 lb/MMBtu. Gas-fired boilers with a maximum rated capacity equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr would be limited to 0.030 lb/MMBtu. The proposed emission limit for gas-fired boilers with a maximum rated capacity less than 40 MMBtu/hr is 0.036 lb/MMBtu, or alternatively, 30 parts per million by volume (ppmv), at 3.0% O_2, dry basis. The proposed 0.020 lb/MMBtu emission specification for gas-fired boilers greater than 100 MMBtu/hr is expected to require the installation of SCR. Owners or operators of gas-fired boilers equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr, may be able meet the 0.030 lb/MMBtu emission specification through combustion modifications, such as installation of low-NO_x burners or burner modifications; however, SCR may be required in some cases to meet this proposed emission specification. The proposed emission specification of 0.036 lb/MMBtu for boilers less than 40 MMBtu/hr is expected to be achievable through installation of low-NO_x burners or burner modifications.

Proposed new §117.410(b)(2) specifies a NO_x emission specification of 2.0 pounds per 1,000 gallons of liquid burned for liquid-fired boilers. The commission anticipates that this emission specification is achievable through installation of SCR.

Proposed new §117.410(b)(3) includes NO_x emission specifications of 0.025 lb/MMBtu for process heaters with a maximum rated capacity equal to or greater than 40 MMBtu/hr, and 0.036 lb/MMBtu (or alternatively, 30 ppmv, at 3.0% O_2, dry basis) for process heaters with a maximum rated capacity less than 40 MMBtu/hr. SCR may be necessary for process heaters with a maximum rated capacity equal to or greater than 40 MMBtu/hr to comply with the proposed 0.025 lb/MMBtu emission specification. Owners or operators of gas-fired process heaters with maximum rated capacities less than 40 MMBtu/hr may be required to install low-NO_x burners or make other combustion modifications to comply with the proposed 0.036 lb/MMBtu emission specification. No liquid-fired process heaters were identified in the inventory in the Dallas-Fort Worth eight-hour ozone area; however, SCR may be necessary for a liquid-fired process heater to comply with the proposed emission specification.

Proposed new §117.410(b)(4) provides NO_x emission specifications for stationary reciprocating internal combustion engines. The proposed language in §117.410(b)(4)(A) and (B) would establish NO_x emission specifications for stationary, gas-fired rich-burn and lean-burn, reciprocating internal combustion engines. Gas-fired engines fired on landfill gas are proposed to be limited to 0.60 grams per horsepower-hour (g/hp-hr) and all other gas-fired engines are proposed to be limited to 0.50 g/hp-hr. Nonselective catalytic reduction (NSCR) is expected to be the primary control technology for rich-burn gas-fired engines. In some cases, the addition of a secondary catalyst module may be required to meet the proposed emission specification. For lean-burn gas-fired engines, the commission has identified two possible control methodologies to achieve the 0.50 g/hp-hr emission standard. One control technology available for lean-burn engines is the application of an exhaust gas recirculation (EGR) kit combined with NSCR control. While NSCR is not normally applied to lean-burn engines, the use of the EGR kit reduces exhaust gas O_2 and allows NSCR to be installed. It is possible that owners or operators of some lean-burn engines may not be able to apply EGR coupled with NSCR. In these cases, SCR may be necessary to achieve the proposed emission specification. The commission has identified only one engine in the Dallas-Fort Worth eight-hour ozone nonattainment area that is fired on land-fill gas. The proposed emission specification of 0.60 g/hp-hr is expected to be achievable through combustion modifications.

Proposed new §117.410(b)(4)(C) would limit stationary, dual-fuel, reciprocating internal combustion engines to 0.50 g/hp-hr. There are three possible dual-fuel engines identified at major sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. The commission anticipates that SCR may be necessary to comply with the proposed 0.50 g/hp-hr emission specification. The commission is soliciting comments on this limit and the possibility of SCR being required to meet this emission specification, particularly in the case of engines fired on gas derived from waste treatment operations.

The proposed new §117.410(b)(4)(D) would establish NO_x emission specifications for stationary diesel reciprocating internal combustion engines placed into service before June 1, 2007, and that have not been modified, reconstructed, or relocated on or after June 1, 2007, as the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. In addition, for proposed new §117.410(b)(4)(D), modification, reconstruction, and relocated would be defined consistent with existing §117.206(c)(9)(D)(i).

The proposed new §117.410(b)(4)(E) would establish NO_x emission specifications for stationary diesel reciprocating internal combustion engines based on engine hp rating and the date the engine was installed, modified, reconstructed, or relocated. These emission specifications are similar to the emission specifications for stationary diesel engines subject to Subchapter B, Division 3 in the Houston-Galveston-Brazoria nonattainment area; however, the commission is not proposing to require engines to meet previous emission specifications for which the dates have passed. The proposed new §117.410(b)(4)(E) would establish the NO_x emission specifications for stationary diesel engines installed, modified, reconstructed, or relocated on or after June 1, 2007. The proposed emission specifications in §117.410(b)(4)(E) are consistent with the emission specifications for stationary diesel engines in the Houston-Galveston-Brazoria nonattainment area that have not yet passed by the time of the anticipated adoption date of this rule.

The commission expects that the majority of stationary diesel engines at major sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area would qualify for exemption under §117.403(a)(9). When owners or operators modify, reconstruct, or relocate existing stationary diesel engines on or after June 1, 2007, if used exclusively in emergency situations, these engines would continue to be exempt from the new emission specifications, but would be required to meet the EPA Tier 1, Tier 2, and Tier 3 emission standards for non-road diesel engines in effect at the time of installation, modification, reconstruction, or relocation. This would ensure that as turnover of older, higher-emitting stationary diesel engines occurs, the replacements would be cleaner engines. For engines that do not qualify for exemption, the commission does not anticipate that engines placed into service prior to June 1, 2007, would require combustion modifications to meet the 11.0 g/hp-hr emission specification. The cost of combustion modifications to stationary diesel engines to meet the emission standards proposed in §117.410(b)(4)(D) is expected to be near the cost of a new engine; therefore, the commission anticipates that for engines placed into service on or after June 1, 2007, the owner or operator would likely purchase new equipment rather than retrofit or modify existing equipment.

Proposed new §117.410(b)(5) would establish NO_x emission specifications for stationary gas turbines. Stationary gas turbines rated at 10 MW or greater would be limited to 0.032 lb/MMBtu; stationary gas turbines rated at 1.0 MW or greater, but less than 10 MW, would be limited to 0.15 lb/MMBtu; and stationary gas turbines less than 1.0 MW would be limited to 0.26 lb/MMBtu. The proposed new §117.410(b)(6) would specify that duct burners used in turbine exhaust ducts would be limited to the corresponding gas turbine emission specifications of §117.410(b)(5). Compliance with the proposed emission specification of 0.032 lb/MMBtu for stationary gas turbines and duct burners used in turbine exhaust ducts may require the installation of SCR. The proposed emission specifications for all stationary gas turbines less than 10 MW and duct burners used in associated turbine exhaust ducts are expected to be achievable through combustion modifications such as water or steam injection or other modifications.

The proposed new §117.410(b)(7) would establish emission specifications for lime, brick, and ceramic kilns in the Dallas-Fort Worth eight-hour ozone nonattainment area. Lime kilns would be limited to 3.1 pounds per ton of calcium oxide (CaO) produced. The 3.1 lb/ton CaO limit for lime kilns is proposed for the lime calcining kilns in the Dallas-Fort Worth eight-hour ozone nonattainment area whose production rates and operations are not compatible with the existing one-hour 0.66 pounds per ton CaO limit derived for lime recovery furnaces at pulp and paper mills in the Houston-Galveston-Brazoria area. This emission rate is based on good combustion practices and proper kiln operation, possibly combined with low-NO_x burners, as specified by the EPA as Best Available Control Techniques (BACT) for lime kilns. The commission is soliciting comments on the technical and economic feasibility of the proposed limit for lime kilns.

Proposed new §117.410(b)(7)(B) would establish a NO_x emission specification of 0.175 pounds per ton of product for brick and ceramic kilns. Compliance with this proposed emission specification is anticipated to be achievable through combustion and process modifications, installation of low-NO_x burners, or staged combustion, or some combination of these control measures.

Proposed new §117.410(b)(8) would establish NO_x emission specifications for metallurgical furnaces. Heat treating furnaces would be limited to 0.087 lb/MMBtu under subparagraph (A), and reheat furnaces would be limited to 0.10 lb/MMBtu under subparagraph (B). The proposed emission specification for heat-treat furnaces is based on the emission specifications for heat treating in the Houston-Galveston-Brazoria ozone nonattainment area, and is expected to be achievable through combustion modifications or installation of low-NO_x burners combined with flue gas recirculation (FGR). The proposed emission specification for reheat furnaces is based on the permitted BACT limits for similar units and is anticipated to require the owners or operators of affected units to make combustion modifications, install ultra low-NO_x burners, and possibly install FGR units to meet the specifications.

Proposed new subparagraph (C) includes a new NO_x emission specification for electric arc furnaces used in steel production, and proposed new subparagraph (D) includes a new emission specification for lead smelting blast (cupola) and reverberatory furnaces that are used in conjunction. The proposed new emission specification for electric arc furnaces is 0.30 pounds per ton of product. Owners or operators would be required to use oxy-firing and combustion and process modifications to meet this proposed emission specification. The proposed new emission specification for lead smelting blast and reverberatory furnaces used in conjunction is the combined rate of 0.45 pounds per ton of product. Owners or operators may be required to use a combination of low-NO_x burners and FGR or possibly post-combustion controls such as SNCR to achieve this emission specification.

Proposed new §117.410(b)(9) would establish NO_x emission specifications for incinerators and provides two options. The first option is to achieve an 80% reduction from the daily NO_x emissions reported to the Industrial Emissions Assessment Section for the calendar year 2000 Emissions Inventory. To ensure that this emission specification would result in a real 80% reduction in actual emissions, a consistent methodology must be to calculate the 80% reduction. The second option is to comply with a 0.030 lb/MMBtu emission specification. While these proposed emission specifications for incinerators may be achievable through installation of low-NO_x burners or making other combustion modifications, SCR may be necessary to achieved the 80% reduction or the 0.030 lb/MMBtu emission specification.

Proposed new §117.410(b)(10) would establish emission specifications for glass and fiberglass melting furnaces. Container glass melting furnaces would be limited to 1.30 pounds per ton of glass pulled under proposed subparagraph (A). Mineral wool-type electric fiberglass melting furnaces would be limited to 1.45 pounds per ton of product pulled under proposed subparagraph (B). Mineral wool-type fiberglass regenerative furnaces would be limited to 1.45 pounds per ton of product pulled under proposed subparagraph (C). The limit for container glass melting furnaces is based on the Consent Decree between the EPA and Saint Gobain Containers specifying the use of oxy-fired furnaces. The emission specifications for the fiberglass melting furnaces are based on a widely accepted BACT limit of 1.4 pounds per ton for these furnaces and are supported by commission staff analysis of data provided from informal stakeholder comments. The commission anticipates that most of the affected furnaces would require low-NO_x burners, oxy-firing, SCR, SNCR, or a combination of these control technologies to reach the proposed emission specifications. Informal stakeholder comments indicate that SCR is not an appropriate control technology for glass and fiber-

glass melting furnaces due to wide variations in furnace operating temperatures. In addition, NO_x emissions from glass melting furnaces, especially electric glass melting furnaces, are typically thermal NO_x emissions formed from the combustion air and high operating temperatures of the furnace and would therefore require oxy-firing for compliance.

Proposed new §117.410(b)(11), (12), and (13) would establish a 0.036 lb/MMBtu NO_x emission specification for the following units, respectively: gas-fired curing and forming ovens used for the production of mineral wool-type or textile-type fiberglass; natural gas-fired ovens and heaters used in industrial processes; and organic, solvent, printing, clay, brick, and ceramic tile dryers fired on natural gas. These emission specifications are anticipated to be achieved through combustion modifications, such as burner modifications or installation of low-NO_x burners.

Proposed new §117.410(b)(14) provides an alternative to the emission specifications in paragraphs (1) - (13) of §117.410(b) for units with an annual capacity factor of 0.0383 or less. The alternative NO_x emission specification for qualifying units would be 0.060 lb/MMBtu. This low annual capacity factor and alternative emission specification are consistent with a similar provision specified for the Houston-Galveston-Brazoria ozone nonattainment area in existing §117.206(c)(2). The capacity factor as of December 31, 2000, must be used to determine whether the unit is eligible for the alternative emission specification. A 12-month rolling average must be used to determine the annual capacity factor for units placed into service after December 31, 2000.

Proposed new §117.410(c), concerning NO_x averaging time, specifies the averaging times for compliance with the emission specifications. Proposed new §117.410(c)(1) specifies the averaging times for units equipped with CEMS or PEMS and provides three options under proposed subparagraphs (A), (B), and (C). Proposed subparagraph (A) specifies a rolling 30-day average, in the units of the applicable standard. Proposed subparagraph (B) specifies a block one-hour average basis, in the units of the applicable standard. Proposed subparagraph (C) specifies a block one-hour average, in pounds per hour, for boilers and process heaters, calculated based on the maximum rated capacity and the applicable emission specification. For units not equipped with CEMS or PEMS, proposed new §117.410(c)(2) requires the averaging time to be a block one-hour average in the units of the applicable standard, but allows the emission specifications for boilers and process heaters to be applied in pounds per hour as specified in proposed new §117.410(c)(1)(C).

Proposed new §117.410(d) would establish NO_x emission specifications for related emissions from any unit subject to the emission specifications in §117.410(a) or (b). This is necessary to ensure that the NO_x reduction strategies of this proposed rulemaking do not result in an excessive increase in emissions of other pollutants. Proposed new §117.410(d)(1) establishes a CO emission specification of 400 ppmv at 3% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines) on a rolling 24-hour averaging period for units equipped with CEMS and PEMS for CO, and on a one-hour average for units not equipped with CEMS or PEMS. Proposed new §117.410(d)(2) specifies that units that inject urea or ammonia into the exhaust stream for NO_x control must meet a 10 ppmv ammonia emission specification. The 10 ppmv ammonia emission specification is corrected to 3.0% O_2 for boilers and process heaters, 15% O_2 for stationary gas turbines and gas-fired lean-burn engines, 7.0% O_2 for incinerators, and 3.0% O_2 for all other units. The specified averaging time for the ammonia emission specification is on a rolling 24-hour averaging period for units equipped with CEMS and PEMS for ammonia, and on a one-hour average for units not equipped with CEMS or PEMS. Proposed new §117.410(d)(3) specifies that the correction of CO emissions to 3.0% O_2, dry basis, does not apply to boilers and process heaters operating at less than 10% maximum load and stack O_2 more than 15%. Proposed new §117.410(d)(4) lists cases where the CO emission specification in proposed new §117.410(d)(1) does not apply, including stationary internal combustion engines subject to proposed new §117.410(a), and incinerators subject to CO limits under 30 TAC §111.121 or §113.2072, or 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

Proposed new §117.410(e) specifies conditions for compliance flexibility with the NO_x emission specifications of proposed new §117.410. Proposed new §117.410(e)(1) specifies that owners or operators may use the source cap option under proposed new §117.423 or emission reduction credits as specified in proposed new §117.9800, to comply with the NO_x emission specifications of proposed new §117.410. Proposed new §117.410(e)(2) prohibits using proposed new §117.425, concerning alternative case specific specifications, as a method of compliance with the NO_x emission specifications of proposed new §117.410. This prohibition is necessary to ensure that the NO_x reductions anticipated from this proposed rulemaking would be realized. Proposed new §117.410(e)(3) specifies that owners or operators may petition the executive director for an alternative to the CO and ammonia emission specifications according to proposed new §117.425.

Proposed new subsection §117.410(f) establishes the provisions for prohibition of circumvention to ensure the anticipated NO_x reductions modeled for this proposed rulemaking would be realized. The proposed new §117.410(f)(1) establishes that the maximum rated capacity used to determine the applicability of the emissions specifications, initial compliance demonstration, monitoring, testing requirements, and final control plan in §§117.410, 117.435, 117.440, and 117.454 must be the greater of the maximum rated capacity as of December 31, 2000, or the maximum rated capacity authorized by a permit issued under 30 TAC Chapter 116 after December 31, 2000. Proposed new §117.410(f)(2) specifies that a unit's classification for the purposes of Subchapter B, Division 4, is determined by the most specific classification applicable to the unit as of December 31, 2000.

The commission proposes a new §117.410(f)(3), specifying the prohibition of changes to a unit subject to an emission specification in §117.410(b) that results in increased NO_x emissions from a unit not subject to an emission specification of §117.410(b) after December 31, 2000. For example, redirecting one or more fuel or waste streams containing chemical-bound nitrogen to a flare or an incinerator with a maximum rated capacity of less than 40 MMBtu/hr is prohibited. The proposed new §117.410(f)(4) specifies that a source that met the definition of a major source as of December 31, 2000, is always classified as a major source for the purposes of Subchapter B, Division 4. A source that did not meet the definition of major source on December 31, 2000, but which at any time after December 31, 2000, becomes a major source, would from that time forward always be classified as a major source for purposes of Subchapter B, Division 4.

Proposed new §117.410(f)(5) specifies that the availability under §117.410(b)(14) of an alternative emission specification for units

with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under §117.410(b)(14) than would otherwise apply to the unit. Proposed new §117.410(f)(6) specifies that prohibition of circumvention of §117.410(f) does not apply to stationary, reciprocating internal combustion engines subject to the IOP emission specifications in §117.410(a) until the compliance date specified in §117.9030(b). These engines are not currently subject to the prohibition of circumvention under existing §117.206, and proposed new §117.410(f)(6) ensures that the provisions of this proposed subsection are not imposed on the owners or operators of these engines until the engines become subject to the new proposed emission specifications in §117.410(b).

Proposed new §117.410(g), relating to operating restrictions, specifies that no person may start or operate any stationary diesel or dual-fuel engine for testing of maintenance between the hours of 6:00 a.m. and noon, except for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours, to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs, or firewater pumps for emergency response training conducted from April 1 through October 31. For the purposes of this provision, proposed new §117.410(g) also specifies that routine maintenance such as an oil change is not considered to be an unforeseen repair. This provision is identical to a requirement implemented for the Houston-Galveston-Brazoria ozone nonattainment area. The requirement, if adopted, would delay emissions of NO_x from testing of these engines until after noon in order to help limit ozone formation.

Section 117.423, Source Cap

The commission proposes a new §117.423 to provide an optional source cap approach to demonstrating compliance with emission specifications of proposed new §117.410. This proposed source cap option is similar to the source cap allowed under existing §117.223 for major sources in ozone nonattainment areas. Proposed new §117.423(a) specifies that the owner or operator may achieve compliance with the emission specifications of §117.410 by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation. If an owner or operator elects this option, any equipment category included in the source cap must include all emission units belonging to that category. All emission units not included in the source cap must comply with the requirements of §117.410.

Proposed new §117.423(b) specifies the equations and procedures for determining the source cap allowable NO_x mass emission rate. The equation in proposed new §117.423(b)(1) specifies how to calculate the 30-day rolling average emission cap in pounds per day. This equation is similar to the source cap equation in existing §117.223(b)(1) as it is applicable to the Dallas-Fort Worth ozone nonattainment area. However, the averaging period for determining the historical average daily heat input, variable H_i in the equation, is defined as the 24 consecutive months between January 1, 2000, and December 31, 2001. In addition, the effective date for an applicable permit emission limit for clause (ii) of variable R_i of the equation is December 31, 2000. Proposed new §117.423(b)(2) specifies the equation for calculating the maximum daily cap, in pounds per day, for all units included in the source cap. The proposed equation in proposed new §117.423(b)(2) is identical to the equation for the maximum daily cap in existing §117.223(b)(2).

Proposed new §117.423(b)(3) specifies that each emission unit in the source cap is subject to the requirements of both subsection (b)(1) and (b)(2). In the existing source cap provisions in §117.223, existing §117.223(b)(4) allows the owner or operator to opt in entire classes of exempted units. The commission is not proposing to allow this option under proposed new §117.423 because it would have limited or no benefit to sources in the Dallas-Fort Worth eight-hour ozone nonattainment area due to the relatively few exempted units under the proposed rule.

Proposed new §117.423(b)(4) specifies the equation for calculating the source cap allowable emission rate, in pounds per hour, for stationary internal combustion engines. The equations in proposed new §117.423(b)(4) and (5) for calculation of the source cap allowable emission rate for stationary internal combustion engines and stationary gas turbines, respectively, are similar to the calculations referenced in existing §117.223(b)(5) and (6). Rather than reference a separate division, the applicable equations are proposed in new §117.423(b)(4) and (5). The equations in proposed new §117.423(b)(4) and (5) are identical in content to the original calculations referenced for stationary internal combustion engines and stationary gas turbines under the source cap option in existing §117.223, except that the resultant titles are changed to reflect the source cap option in proposed §117.423 and the section cross-reference in the equation in §117.423(b)(5) references proposed new §117.410(b).

Proposed new §117.423(c) specifies the continuous emissions monitoring and testing requirements for the source included in the source cap. Proposed new §117.423(c)(1)(A) and (B) specifies that for each unit included in the source cap, the owner or operator must comply with the NO_x, CO, O_2 (or carbon dioxide), and fuel monitoring requirements of proposed new §117.440, either using a CEMS or a PEMS. Both §117.423(c)(1)(A) and (B) specify that the CEMS or PEMS, and the fuel flow meters must be used to demonstrate compliance with the source cap. Proposed new §117.423(c)(1)(C) specifies that for units not subject to continuous monitoring requirements, the owner or operator may use the maximum emission rate as measured during testing conducted according to proposed new §117.435(d). Proposed new §117.423(c)(1)(C) also specifies that the emission rates for such units are limited to the maximum emission rates obtained from the testing. Proposed new §117.423(c)(2) specifies that for each unit equipped with a CEMS, the owner or operator shall either use a PEMS or the maximum emission rate measured by testing according to §117.435(d) to provide substitute emissions data when the CEMS is off-line. Methods specified in 40 CFR §75.46 are required for providing substitute data for PEMS.

Proposed new §117.423(d) requires daily records of NO_x emissions and total fuel usage for each unit under the source cap, as well as records of the total NO_x emissions summation and total fuel usage for all units under the source cap. In addition, the records must be maintained in accordance with the requirements of proposed §117.445.

Proposed new §117.423(e) establishes procedures for the reporting of any emission exceedances of the source cap. The proposed procedures are consistent with the reporting requirements under the existing source cap provisions of existing §117.223, including notification of the appropriate regional office within 48 hours, followed by a written report within 21 days, content requirements for the report, and semiannual reporting for monitoring systems. Proposed new §117.423(f) specifies that initial compliance with the source cap shall be demonstrated in accordance with the compliance schedule in §117.9030.

Conditions for including a permanently retired, decommissioned, or rendered inoperable unit in the source cap are specified in proposed new §117.423(g). Proposed paragraph (1) specifies that the shutdown must have occurred after December 31, 2000, and proposed paragraph (2) specifies that the source cap emission limit must be calculated according to subsection (b). Proposed paragraph (3) specifies that the actual heat input must be calculated according to proposed subsection (b)(1). However, if the unit was not in service 24 consecutive months between January 1, 2000, and December 31, 2001, proposed paragraph (3) specifies that the actual heat input must be the heat input used to represent the unit's emissions in the attainment demonstration modeling inventory. Also, the maximum heat input must be the maximum heat input certified by the executive director, allowed or possible (whichever is lower) in a 24-hour period. Proposed paragraph (4) requires the owner or operator to certify the operational level and maximum rated capacity of the unit. Proposed paragraph (5) prohibits emission reductions from shutdowns or curtailments used for netting or offsetting purposes under Chapter 116 from being included in the baseline for establishing the cap.

Proposed new §117.423(h) specifies that owners or operators who choose to use the source cap for compliance with §117.410 must include a plan for compliance in the initial control plan required in proposed new §117.450. In addition, the owner or operator must provide identification of election to use the source cap option, identification of all sources included in the source cap, and the method of calculating the annual heat input for each unit included in the source cap. Proposed new §117.423(i) specifies the procedures for calculating the contributions from each affected unit under the source cap during a startup, shutdown, or emissions event as defined in §117.10.

Finally, the existing rules for major sources of NO_x in the Dallas-Fort Worth ozone nonattainment area provide an additional compliance option using the alternative plant-wide emission specification provisions of existing §117.207. The commission is not proposing to allow the alternative plant-wide emission specifications approach for proposed new Subchapter B, Division 4. A source cap approach provides more flexibility than the alternative plant-wide emission specifications because the owner or operator can choose which source categories to include under the source cap approach. The source cap option in proposed new §117.423 provides sufficient flexibility that providing an additional alternative plant-wide emission specification option would have little or no benefit.

Section 117.425, Alternative Case Specific Specifications

The commission proposes a new §117.425 that provides procedures concerning alternative case specific specifications. Proposed new §117.425(a) specifies that where it can be demonstrated that an affected unit cannot attain the applicable requirements of the CO or ammonia specifications of proposed new §117.410(c), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.410(c) under the proposed guidelines of new §117.425(a)(1) - (3). Proposed new paragraph (1) specifies that the executive director shall consider, on a case-by-case basis, the technological and economic circumstances of the individual unit. Proposed new paragraph (2) requires the executive director to determine whether the alternative emission specifications are the lowest specification the unit is capable of achieving after application of controls to meet the NO_x emission specifications of proposed new §117.410. Proposed new paragraph (3) allows the executive director to consider plant-wide averaging to meet the emission specifications.

Finally, proposed §117.425(b) specifies that any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision, and that the requirements of 30 TAC §50.139 (Motion to Overturn Executive Director's Decision) apply to §117.425. Proposed new subsection (b) also specifies that executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for EPA approval in some cases.

Section 117.430, Operating Requirements

The proposed new §117.430 establishes operating requirements for sources subject to proposed new Subchapter B, Division 4. Proposed new §117.430(a) requires an owner or operator who has chosen to use the source cap option in proposed new §117.423 to comply with the emission specifications to operate affected units in compliance with those limitations.

Proposed new §117.430(b) requires that all units subject to the emission specifications of §117.410(a) or (b) or §117.423 must be operated to minimize NO_x emissions, consistent with the emission control techniques selected, over the units operating or load range during normal operations, and subject to the operating requirements detailed in proposed new §117.430(b)(1) - (7). Proposed paragraph (1) requires boilers, except for wood-fired boilers, to be operated with O_2, CO, or fuel trim. Proposed paragraph (2) requires boilers and process heaters controlled with forced FGR to be operated such that the proportional design rate of FGR is maintained over the operating range. Proposed paragraph (3) requires boilers and process heaters controlled with induced draft FGR to be operated such that FGR over the operating range is not restricted. Proposed new paragraphs (4) and (5) specify that units controlled with steam or water injection, or with post-combustion control must be operated such that the steam or water injection rate, or chemical agent injection rate is maintained to limit NO_x concentrations to less than or equal to concentrations at maximum rated capacity. Proposed paragraph (6) requires an automatic air-fuel ratio (AFR) controller, based on O_2 or CO control, be installed on engines controlled with NSCR, and that the controller maintain the AFR within the range required to meet the applicable emission specification. Finally, proposed paragraph (7) requires that each stationary internal combustion engine be tested for proper operation according to proposed new §117.8140(b), which includes quarterly testing of NO_x and CO emissions. These operating requirements are consistent with the operating requirements specified under existing §117.208 for the Dallas-Fort Worth ozone nonattainment area.

Section 117.435, Initial Demonstration of Compliance

Proposed new §117.435 specifies the requirements for owners or operators of units subject to this division for demonstrating initial compliance with the rule. Proposed new §117.435(a) specifies that the owner or operator of any unit subject to the emission specifications of the division must test the unit. Proposed paragraphs (1) and (2) specify that units must be tested for NO_x, CO, and O_2, and that units that inject urea or ammonia for NO_x control must be tested for ammonia emissions. Proposed paragraph (3) specifies that the testing must be performed in accordance with the compliance schedule in proposed new §117.9030.

Proposed new §117.435(b) specifies that compliance tests required by proposed new §117.435(a) must be performed using

the methods referenced in proposed new §117.435(d) or (e) and used for determination of initial compliance with the emission specifications of the division, and must be in the units of the applicable emission specifications and averaging periods. Proposed new §117.435(c) requires that any CEMS or PEMS required by proposed new §117.440 must be installed and operational before conducting the initial demonstration of compliance testing, and specifies the minimum requirements for verifying operational status of the CEMS or PEMS.

Proposed new §117.435(d) references proposed new §117.8000 for the compliance test requirements for units operating without CEMS or PEMS. Proposed new §117.435(e) specifies the requirements of initial compliance testing for units operating with CEMS or PEMS in accordance with §117.440. The initial demonstration of compliance is performed using the CEMS or PEMS after monitor certification. Proposed new paragraphs (1) - (4) specify the procedures for the initial demonstration of compliance using CEMS or PEMS, depending on the unit type, pollutant, applicable averaging time, or whether the unit is included in the optional source cap in proposed new §117.423.

Proposed new §117.435(f) references the information that must be included in compliance stack reports as specified by §117.8010 (Compliance Stack Reports).

Section 117.440, Continuous Demonstration of Compliance

The commission proposes a new §117.440, concerning continuous demonstration of compliance, that specifies the operating, monitoring, and testing required by owners and operators of units subject to the emissions specifications of §117.410 and §117.423. Proposed new §117.410(a) requires the installation, calibration, maintenance, and operation of totalizing fuel flow meters for owners and operators of affected units. Proposed paragraph (1) specifies the units that would be subject to the fuel metering requirements of proposed new §117.440(a). These units include: boilers; process heaters; duct burners used in turbine exhaust ducts; stationary, reciprocating internal combustion engines; stationary gas turbines; lime kilns; brick and ceramic kilns; heat treating furnaces; reheat furnaces; electric arc furnaces used in steel production; lead smelting blast (cupola) and reverberatory furnaces; glass and fiberglass melting furnaces; glass, fiberglass, and mineral wool curing and forming ovens; incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator); natural gas-fired ovens and heaters; and natural gas-fired organic solvent, printing ink, clay, brick, ceramic, calcining, and vitrifying dryers.

Proposed new §117.440(a)(2) lists the alternatives to the fuel flow monitoring requirements. Proposed subparagraph (A) allows units operating with NO_x and diluent CEMS to monitor exhaust gas flow rate using 40 CFR Part 60, Appendix B, Performance Specification 6, or 40 CFR Part 75, Appendix A. Proposed subparagraph (B) allows units that vent to a common stack with a NO_x and diluent CEMS to share a single totalizing fuel flow meter. Proposed subparagraph (C) allows diesel engines operating with run time meters to satisfy the fuel monitoring requirements through monthly fuel use records maintained for each engine.

Proposed new §117.440(b) requires owners or operators to install, calibrate, maintain, and operate O_2 monitors for certain units. Proposed new §117.440(b)(1) requires O_2 monitors on units in subparagraphs (A) and (B) that are operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year. Boilers with a rated heat input greater than or equal to 100 MMBtu/hr are included in proposed paragraph (A). Process heaters with a rated heat input greater than or equal to 100 MMBtu/hr are specified in proposed paragraph (B), with exceptions provided in proposed clauses (i) and (ii). The O_2 monitors required under proposed new §117.440(b) are for process monitoring purposes and proposed new §117.440(b)(2) specifies that the monitors are only required to meet the CEMS requirements of subsection (f) if O_2 is the monitored diluent under subsection (f). If new monitors are required under proposed new §117.440(b), the procedures referenced in §117.440(f) are the appropriate guidance for the monitor location and calibration.

Proposed new §117.440(c) specifies the units for which owners and operators shall install, calibrate, maintain, and operate a CEMS or PEMS to monitor NO_x exhaust. The units listed include: units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to proposed new §117.410(b); stationary gas turbines with a MW rating greater than or equal to 30 MW operated more than 850 hours per year; units that use a chemical reagent for reduction of NO_x; units that the owner or operator elects to comply with the NO_x emission specifications using a lb/MMBtu limit on a 30-day rolling average; lime kilns; and brick kilns and ceramic kilns. These proposed new monitoring requirements are anticipated to require some owners or operators to install CEMS or PEMS on units that currently do not have CEMS or PEMS. The continuous NO_x monitoring requirements are necessary to ensure compliance with the proposed emission specifications on certain larger units, units that use chemical agents for NO_x control, and units, such as kilns, that are anticipated to have variable emissions. Proposed new §117.440(c)(2) exempts units subject to the NO_x CEMS requirements of 40 CFR Part 75 because the Acid Rain NO_x monitoring requirements would meet or exceed the minimum requirements proposed in §117.440. In addition, proposed new §117.440(c)(3) specifies the methods to be used to provide substitute emissions compliance data during periods when the NO_x monitors are off-line.

New proposed subsection §117.440(d) adds an ammonia monitoring requirement for any unit subject to proposed new §117.410(b) and (c)(2) and references §117.8130 for allowed ammonia monitoring methods. Engines subject to proposed new §117.410(a), the emission specifications from existing §117.206(b)(3), are not currently subject to ammonia monitoring requirements under the existing rule. The commission is not proposing to retroactively impose this requirement on sources subject to §117.206(b)(3). Therefore, proposed new §117.440(d) excludes sources subject to proposed new §117.410(a).

Proposed new §117.440(e) specifies that all owners or operators of unit types listed in §117.440(c)(1) shall monitor CO according to the requirements of proposed new §117.8120. Proposed new §117.440(f) specifies that CEMS used for compliance with this section must be operated within the requirements of proposed new §117.8100(a). Proposed new §117.440(g) specifies that PEMS used to satisfy the monitoring requirements of proposed §117.440 must predict the pollutant emissions in the units of the applicable emission specification and comply with the requirements of proposed new §117.8100(b). The CEMS and PEMS requirements in proposed new §117.8100 are the existing requirements for CEMS and PEMS proposed to be incorporated from existing §117.213.

Proposed new §117.440(h) specifies that the owner or operator of stationary internal combustion engines not equipped with a CEMS or PEMS must comply with the monitoring requirements

of §117.8140(a). Under §117.8140(a), engines are required to be testing biennially, or within 15,000 hours of operation, similar to the current requirement under existing §117.213(g).

Proposed new §117.440(i) requires the owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption in proposed new §117.403(a)(7)(D), (a)(8), or (a)(9) to record the operating time with a non-resettable elapsed run time meter. Proposed new §117.440(j), concerning data used for compliance, specifies that the methods required in proposed new §117.440 must be used to demonstrate compliance with the proposed emission specifications after the initial demonstration of compliance. The provisions of proposed subsection (j) also specify that the executive director may use other commission compliance methods to determine compliance with the emission specifications.

Finally, proposed new §117.440(k) specifies the testing and retesting requirements for units subject to the emission specifications of proposed §117.410. Proposed paragraph (1) specifies that the owner or operator of units that are subject to the emission specifications of §117.410(a) shall test the units as specified in proposed §117.435 in accordance with the schedule specified in proposed new §117.9030(a). Proposed paragraph (2) requires the owner or operator of units subject to the emission specifications of proposed new §117.410(b) to test the units as specified in §117.435 in accordance with the schedule specified in proposed new §117.9030(b). A retesting requirement is specified in proposed paragraph (3) that requires owners or operators to retest any unit subject to the emission specifications of proposed new §117.410(b) after any modification that could be reasonably expected to increase the NO_x emission rate. This proposed retesting provision only applies to units that are not equipped with CEMS or PEMS to monitor NO_x emissions.

Section 117.445, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.445 that specifies the notification, recordkeeping, and reporting requirements for units subject to the emission specifications of this division. Proposed new §117.445(a), concerning startup and shutdown records, specifies the recordkeeping requirements for units subject to the startup and/or shutdown provisions of §101.222. The record retention and minimum content requirements are specified in proposed new subsection (a). Proposed subsection (a) also specifies that records must be made available for inspection upon request by the executive director, EPA, and any local air pollution control agency having jurisdiction.

Notification requirements are specified in proposed new §117.445(b). Proposed new §117.445(b) requires notification be provided to the appropriate regional office and any local air pollution agency having jurisdiction. The specific notification requirements are listed in proposed new §117.445(b)(1) and (2). Proposed paragraph (1) specifies the notification requirements for units subject to the emission specifications of §117.410(a). Proposed §117.445(b)(1)(A) requires verbal notification of the date of any testing conducted under proposed new §117.435 at least 15 days prior to the date of testing followed by written notification within 15 days after testing is completed. Proposed §117.445(b)(1)(B) requires verbal notification of the date of any CEMS or PEMS relative accuracy test audit (RATA) conducted under §117.440 at least 15 days prior to such date followed by written notification within 15 days after testing is completed. The notification requirements specified in proposed new §117.445(b)(2) are applicable to units subject to the emission specifications in proposed new §117.410(b). Under proposed new §117.445(b)(2), written notice is required at least 15 days in advance of the date of any RATA conducted under proposed §117.440 or test conducted under proposed §117.435. The commission is proposing the single written notification requirement under proposed new §117.445(b)(2) to eliminate the requirement for redundant notifications for units subject to the emissions specification in proposed §117.410(b). However, units subject to proposed §117.410(a) are currently regulated under existing §117.206(b)(3) and subject to the existing notification requirements of existing §117.219(b). The notification requirements in proposed new §117.445(b)(1) are identical to the requirements in existing §117.219(b) to maintain consistency with the current requirements applicable to owners or operators subject to proposed new §117.410(a).

Proposed new §117.445(c), concerning reporting of test results, specifies the owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.435 and any CEMS or PEMS RATA conducted under §117.440. Reports must be submitted within 60 days after completion of such testing or evaluation and not later than the compliance schedule specified in proposed new §117.9030.

Proposed new subsection §117.445(d), concerning semiannual reports, requires the owner or operator of a unit required to install a CEMS or PEMS under §117.440 to report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications and the associated monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. The information required in the reports is detailed in proposed new §117.445(d)(1) - (5). Proposed paragraph (1) requires the magnitude of excess emissions, computed according to 40 CFR §60.13(h), to be reported, as well as conversion factors used, time period of excess emissions, and unit operating time during the reporting period. Provisions for sources subject to the proposed source cap in proposed new §117.423 are also given. Proposed paragraph (2) lists report requirements for excess emissions during startups, shutdowns, and malfunctions, and proposed paragraph (3) lists report requirements for periods when continuous monitoring systems are inoperative. If no excess emissions or downtime have occurred during the reporting period, proposed paragraph (4) specifies that the report must indicate that no excess emissions or monitoring downtime have occurred. Proposed paragraph (5) provides conditions for summary reports if excess emissions and monitor downtime are limited.

Proposed new §117.445(e) specifies the semiannual reporting requirements for owners and operators of any gas-fired engines. Written reports of excess emissions and the air-fuel ratio monitoring system performance must be submitted to the executive director. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Additional specific information required in the reports is detailed in proposed paragraphs (1) and (2) similar to the current requirements specified in the existing §117.219(e)(1) and (2) for engine semiannual reports.

Proposed new §117.445(f), concerning recordkeeping, specifies requirements for written or electronic records for owners or operators of units subject to the requirements of this division.

Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, EPA, or local air pollution control agencies having jurisdiction. Proposed new §117.445(f)(1) specifies that for each unit subject to §117.440(a) the records must include records of annual fuel usage. For each unit using a CEMS or PEMS in accordance with §117.440, proposed new §117.445(f)(2) requires monitoring records of hourly emissions and fuel usage for units complying on a block one-hour average, or daily emissions and fuel usage for units complying with an emission specification enforced on a daily or rolling 30-day average.

For stationary internal combustion engines subject to the proposed emission specifications of the division, proposed new §117.445(f)(3) requires the owner or operator to maintain records of emissions measurements required by proposed §117.430(b)(7) and §117.440(h), as well as catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken.

Proposed new §117.445(f)(4) specifies owners or operators of units claimed exempt from emission specifications using the exemption of §117.403(a)(7)(D), (a)(8), or (a)(9) must maintain records of monthly hours of operation for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.403(a)(7)(D), written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and dates of the emergency situation.

Proposed new §117.445(f)(5) and (6) requires owners or operators of applicable units to maintain records of ammonia and CO measurements specified in §117.440(d) and (e), respectively. Proposed new §117.445(f)(7) requires owners or operators of units operating with CEMS or PEMS to maintain records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance.

Proposed new §117.445(f)(8) requires owners or operators to maintain records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with proposed new §117.435. Proposed new §117.445(f)(9) specifies owners or operators of each stationary diesel or dual-fuel engine to maintain records of each time the engine is operated for testing and maintenance, including dates of operation, start and end times of operation, identification of the engine, and total hours of operation for each month and for the most recent 12 consecutive months.

Section 117.450, Initial Control Plan Procedures

The commission proposes a new §117.450, concerning initial control plan procedures. Proposed new §117.450(a) requires the owner or operator of any unit at a major source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to §117.410(b) to submit an initial control plan. Proposed new §117.450(a)(1) specifies that the control plan must include a list of all combustion units at the account that are listed in proposed §117.410(b). The list must include for each unit the maximum rated capacity, anticipated annual capacity factor, estimated or measured NO_x emission data in the units associated with the category of equipment from §117.410(b), the method of determination for the NO_x emission data, the facility identification number and emission point number as submitted to the Industrial Emissions Assessment Section of the commission, and the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit.

Proposed new §117.450(a)(2) requires the initial control plan to include the identification of all units with a claimed exemption from the emission specifications in proposed §117.410(b) and the rule basis for the claimed exemption. Proposed new §117.450(a)(3) requires the initial control plan to include the identification of the election to use the source cap emission limit in proposed §117.423 to achieve compliance with this proposed rule and a list of the units to be included in the source cap.

Proposed new §117.450(a)(4) requires the initial control plan to include a list of units to be controlled and the type of control to be applied for each unit, including an anticipated construction schedule. Proposed new §117.450(a)(5) requires the initial control plan to include a list of units requiring operating modifications to comply with §117.430(b) and the type of modification to be applied for each unit, including an anticipated construction schedule. Proposed new §117.450(a)(6) specifies that for units required to install totalizing fuel flow meters in accordance with §117.440(a), the initial control plan must indicate whether the fuel meters are currently in operation, and if so, whether they have been installed as a result of the requirements of this proposed rule.

Proposed new §117.450(a)(7) specifies that for units required to install CEMS or PEMS in accordance with §117.440, the initial control plan must indicate whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this proposed rule.

Proposed new §117.450(b) specifies the initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for initial control plans in proposed new §117.9030(b).

Finally, proposed new §117.450(c) specifies that for units located in Dallas, Denton, Collin, and Tarrant Counties, subject to proposed new §117.210, the owner or operator may elect to submit the most recent revision of the final control plan required by proposed new §117.254 in lieu of the initial control plan required by proposed subsection (a).

Section 117.454, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.454 that requires the owner or operator of any unit subject to proposed new §117.410(b) at a major source of NO_x to submit a final control report to show compliance with the requirements of proposed §117.410.

Proposed new §117.454(a)(1) - (5) specify the content requirements of the report. The final control report must identify which sections are used to demonstrate compliance. In addition, the report must include: the method of NO_x control for each unit; the emissions measured by testing required in proposed §117.435; the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or RATA report required by §117.435 not being submitted concurrently with the final compliance report; and the specific rule citation for any unit with a claimed exemption from the emission specifications of proposed §117.410.

Proposed new §117.454(b)(1) - (3) specifies that for sources complying with proposed §117.423, in addition to the require-

ments of proposed subsection (a), the owner or operator shall submit: the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates; the average daily heat input, H_i, specified in proposed §117.423(b)(1); the maximum daily heat input, H_{mi}, specified in proposed §117.423(b)(1); the method of monitoring emissions; the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and an explanation of the basis of the values of H_i and H_{mi}.

Proposed new §117.454(c) specifies the report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for final control plans in proposed §117.9030(b). The plan must be updated with any emission compliance measurements submitted for units using CEMS or PEMS and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9030.

Section 117.456, Revision of Final Control Plan

The commission proposes a new §117.456, concerning revision of final control plan, to specify the conditions under which a revised final control plan may be submitted by the owner or operator, along with any required permit applications. The section specifies that such a plan must adhere to the requirements and the final compliance dates of the division, and that for sources complying with proposed §117.410, replacement new units may be included in the control plan. Also, for sources complying with proposed §117.423, any new unit must be included in the source cap if the unit belongs to an equipment category that is included in the source cap. Finally, proposed new §117.456 specifies that the revision of the final control plan is subject to the review and approval of the executive director.

SUBCHAPTER C, COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

The commission proposes a new Chapter 117, Subchapter C, entitled Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas, that incorporates the rule language from existing Chapter 117, Subchapter B, Combustion at Major Sources, Division 1, Utility Electric Generation in Ozone Nonattainment Areas. The proposed new Subchapter C is structured based on regional nonattainment areas. Each proposed new division applies only to a specific ozone nonattainment area. Rule language from existing Subchapter B, Division 1 that is not applicable for the specific region is not proposed to be included in the new division for that specific region. Unless otherwise specified in this preamble, such exclusions of rule language not applicable to the specific region are considered non-substantive changes and are not specifically discussed in the preamble.

In addition, the commission proposes a new Subchapter C, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, that includes new rule language and requirements associated with major utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. The new Subchapter C, Division 4 is proposed as a part of the commission's eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area.

DIVISION 1, BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

The commission proposes a new Chapter 117, Subchapter C, Division 1, entitled Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources, that incorporates the provisions in the existing Chapter 117, Subchapter B, Division 1, applicable to utility electric generation sources in the Beaumont-Port Arthur ozone nonattainment area.

Section 117.1000, Applicability

The commission proposes a new §117.1000 that incorporates the applicability rule language in existing §117.101 applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1000(a) incorporates the rule language in the existing §117.101(a) and (a)(1) - (4). The list of applicable units in existing §117.101(a)(1) - (4), including utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts, is incorporated into the proposed new §117.1000(a). Proposed new §117.1000(a)(1) and (2) incorporate the language regarding owners or operators of the applicable units. Proposed new §117.1000(a)(1) incorporates the rule language from existing §117.101(a) concerning the applicability related to units owned or operated by a municipality or a PUC-regulated utility. In addition, the commission proposes a new §117.1000(a)(2) concerning the applicability of the division to electric power generating systems owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility. This proposed change is intended to clarify the applicability of the rule and does not expand the applicability of the rule. Finally, the commission also proposes a new §117.1000(b) that incorporates the rule language in existing §117.101(b).

Section 117.1003, Exemptions

The commission proposes a new §117.1003 that incorporates the exemptions in the existing §117.103 applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1003(a) - (c) incorporate the exemptions in the existing §117.103(a) - (c). In addition, for proposed new §117.1003(c)(1), the commission proposes to revise the existing language in §117.103(c)(1) to expand the provisions relating to emergency fuel oil firing exemptions to emergency operating conditions declared by the Southeastern Electric Reliability Council, and to remove reference to the Southwest Power Pool. This proposed change is necessary because the Southeastern Electric Reliability Council area overlaps the Beaumont-Port Arthur ozone nonattainment area. The Southwest Power Pool area does not apply to the Beaumont-Port Arthur ozone nonattainment area.

Section 117.1005, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.1005 that incorporates the rule language in the existing §117.105, relating to emission specifications for RACT, applicable to the Beaumont-Port Arthur ozone nonattainment area. The commission proposes a new §117.1005(a) - (l) that incorporates the rule language in the existing §117.105(a) - (l).

The commission proposes a new equation in §117.1005(d) that incorporates the existing equation for calculating the rolling 24-hour heat input weighted average emission specification in the existing §117.105(d). The proposed new equation in §117.1005(d) presents the equation in a format consistent with

other figures in Chapter 117 and provides a written description of all the terms used in the equation. In addition, for proposed new §117.1005(e), the commission proposes using auxiliary steam boilers as opposed to auxiliary boilers used in the existing language to be consistent with the definition in §117.10. For proposed new §117.1005(i), the commission proposes to change the word "ten" to the numeral "10" regarding the MW rating for stationary gas turbines subject to the CO emission specification in proposed new §117.1005(i). Finally, proposed new §117.1005(l) incorporates the rule language from existing §117.105(l) and (l)(1).

Section 117.1010, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.1010 that incorporates the rule language in the existing §117.106, relating to emission specifications for attainment demonstrations, applicable to the Beaumont-Port Arthur ozone nonattainment area.

The commission proposes a new §117.1010(a), relating to NO_x emission specifications, that incorporates the rule language and emission specifications in the existing §117.106(a). Proposed new §117.1010(b) incorporates the rule language concerning related emissions in the existing §117.106(d). In addition, for proposed new §117.1010(b)(2), the commission proposes to change the emissions specification for ammonia from the word "ten" to the numeral "10." As previously discussed in this preamble, this change is necessary to ensure consistent enforcement of the emission specification. Proposed new §117.1010(c), relating to compliance flexibility, incorporates the rule language in the existing §117.106(e) and (e)(1) - (3).

Section 117.1015, Alternative System-Wide Emission Specifications

The commission proposes a new §117.1015 that incorporates the rule language in the existing §117.107, relating to alternative system-wide emission specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area. The commission proposes a new §117.1015(a) - (d) that incorporates the rule language in the existing §117.107(a) - (d). In addition, for proposed new §117.1015, the commission is proposing to revise language in existing §117.107 referencing system-wide emission limit or system-wide emission limitation to specify system-wide emission specification. These changes are proposed to provide consistency and clarity in proposed new §117.1015 and to be consistent with the section title and the proposed change to the definition of system-wide emission limit in §117.10 discussed previously in this preamble.

Proposed new §117.1015(d) incorporates the rule language from existing §117.107(d). In addition, existing §117.107(d)(1) and (2) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new equations are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.1015(d)(1) incorporates the calculation for allowable system-wide NO_x emission specification for each affected utility boiler in the existing §117.107(d)(1). The proposed new equations in §117.1015(d)(2) incorporate the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.107(d)(2) as well as the existing equation for the in-stack NO_x concentration term in the existing §117.107(d)(2).

Section 117.1020, System Cap

The commission proposes a new §117.1020 that incorporates the rule language in the existing §117.108, relating to system cap, applicable to the Beaumont-Port Arthur ozone nonattainment area. The commission proposes a new §117.1020(a) - (k) that incorporates the rule language in the existing §117.108(a) - (k). In addition, the commission proposes new equations in §117.1020(c) that incorporate the equations in existing §117.108(c) and present the equations in a format consistent with other equations in Chapter 117. The proposed new equations in §117.1020(c) include only the information applicable to the Beaumont-Port Arthur ozone nonattainment area. The proposed new equation in §117.1020(c)(1) incorporates the equation for the rolling 30-day average emission cap in the existing §117.108(c)(1). The proposed new equation in §117.1020(c)(2) incorporates the equation for the maximum daily emission cap in the existing §117.108(c)(2).

The commission proposes a new §117.1020(k) that incorporates the requirements of the existing §117.108(k). The new §117.1020(k) changes source cap to system cap to be consistent with the section. Also, for proposed new §117.1020(k), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions) . . .." This proposed change is necessary to update the rule to current terminology used by the commission.

The commission proposes a new §117.1020(l) relating to the use of emissions credits, that incorporates the rule language from existing §117.109, System Cap Flexibility. Proposed new §117.1020(m) relating to the sale and transfer of an electric generating system, incorporates the rule language from existing §117.110, Change of Ownership - System Cap.

Section 117.1025, Alternative Case Specific Specifications

The commission proposes a new §117.1025 that incorporates the rule language in the existing §117.121, relating to alternative case specific specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1025(a) and (b) incorporate the rule language in the existing §117.121(a) and (b). In addition, the proposed new §117.1025(a) omits the provision in the existing §117.121(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.1035, Initial Demonstration of Compliance

The commission proposes a new §117.1035 that incorporates the rule language in the existing §117.111, relating to initial demonstration of compliance, applicable to the Beaumont-Port Arthur ozone nonattainment area.

Section 117.1040, Continuous Demonstration of Compliance

The commission proposes a new §117.1040 that incorporates the rule language in the existing §117.113, relating to continuous demonstration of compliance, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1040(a) incorporates the rule language in the existing §117.113(a), relating to NO_x monitoring. Proposed new §117.1040(b) incorporates the CO monitoring requirements from existing §117.113(b). The specific requirements and methods in the existing §117.113(b) appear in the proposed new §117.8120, relating to CO monitoring, and subsequently have been omitted from proposed new §117.1040(b) and replaced with a reference

to the proposed new §117.8120. Similarly, the requirements for CEMS in the existing §117.113(c)(1) and (2) appear in the proposed new §117.8110(a), relating to emission monitoring system requirements for utility electric generation sources. Therefore, the proposed new §117.1040(c) omits the specific requirements of existing §117.113(c)(1) and (2) and references to the proposed new §117.8110(a).

Proposed new §117.1040(d) incorporates the rule language from existing §117.113(d), concerning acid rain peaking units. Proposed new §117.1040(e) incorporates the rule language from existing §117.113(e), concerning auxiliary boilers. In addition, for proposed new §117.1040(e), the commission proposes to revise auxiliary boiler to auxiliary steam boiler to be consistent with the definition in §117.10.

The commission proposes a new §117.1040(f) that incorporates the requirements for PEMS from existing §117.113(f). Proposed new §117.1040(f)(1) incorporates the rule language from existing §117.113(f)(1). The requirements in the existing §117.113(f)(2) - (4) appear in the proposed new §117.8110(b), relating to emission monitoring system requirements for utility electric generation sources, and subsequently have been omitted from the proposed new §117.1040(f) and replaced with a reference to §117.8110(b) in proposed new §117.1040(f)(2).

Proposed new §117.1040(g) - (j) incorporate the rule language applicable to the Beaumont-Port Arthur ozone nonattainment area from existing §117.113(g) - (j), respectively. Proposed new §117.1040(k) incorporates the rule language from existing §117.113(k) and (k)(1), and proposed new §117.1040(l) incorporates the rule language from existing §117.113(l).

Section 117.1045, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.1045 that incorporates the requirements in the existing §117.119, relating to notification, recordkeeping, and reporting requirements, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1045(a) - (e) incorporate the rule language from existing §117.119(a) - (e). In addition, for proposed new §117.1045(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.1045(a). The commission is soliciting comments on this specific change to the language in existing §117.119(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed.

Section 117.1052, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.1052 that incorporates the rule language in the existing §117.115, relating to final control plan procedures for RACT, applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.1052(a), (b), and (c) incorporate the rule language from existing §117.115(a), (b) and (d), respectively. In addition, the commission proposes to revise the section title reference in proposed new §117.1052(a)(2)(B) to reference the correct title "Alternative System-Wide Emission Specifications." Also, the commission proposes to omit the existing §117.115(c), relating to electronic submission and formatting requirements for the control plan, from the proposed new §117.1052. Existing §117.115 and proposed new §117.1052 specify the content requirements for the control plan. Therefore, a mandatory format for the control plan information is not necessary.

Section 117.1054, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.1054 that incorporates the rule language in the existing §117.116, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Beaumont-Port Arthur ozone nonattainment area.

Section 117.1056, Revision of Final Control Plan

The commission proposes a new §117.1056 that incorporates the rule language in the existing §117.117, relating to revision of final control plan, applicable to the Beaumont-Port Arthur ozone nonattainment area.

DIVISION 2, DALLAS-FORT WORTH OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

The commission proposes a new Chapter 117, Subchapter C, Division 2, entitled Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources, that incorporates the rule language in the existing Chapter 117, Subchapter B, Division 1 applicable to utility electric generation sources in the Dallas-Fort Worth ozone nonattainment area.

Section 117.1100, Applicability

The commission proposes a new §117.1100 that incorporates the applicability rule language in the existing §117.101 applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.1100(a) incorporates the rule language in the existing §117.101(a) and (a)(1) - (4). The list of applicable units in existing §117.101(a)(1) - (4), including utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts, is incorporated into the proposed new §117.1100(a). Proposed new §117.1100(a)(1) and (2) incorporate the language regarding owners or operators of the applicable units. Proposed new §117.1100(a)(1) incorporates the rule language from existing §117.101(a) concerning the applicability related to units owned or operated by a municipality or a PUC-regulated utility. In addition, the commission proposes a new §117.1100(a)(2) concerning the applicability of the division to electric power generating systems owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility. As previously indicated in this preamble, this proposed change is intended to clarify the applicability of the rule and does not expand the applicability of the rule. The commission proposes a new §117.1100(b) that incorporates the rule language in existing §117.101(b).

Finally, the commission proposes a new §117.1100(c) that specifies the provisions of the proposed new Subchapter C, Division 2 no longer apply to any electric generating facility in Collin, Dallas, Denton, and Tarrant Counties that is subject to the emission specifications in proposed new §117.1310, after the appropriate date in the proposed new §117.9130, relating to the compliance schedule for Dallas-Fort Worth eight-hour ozone nonattainment area utility electric generation sources. The emission specifications in proposed new §117.1310 and all other associated requirements in the proposed new Subchapter C, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, discussed later in this preamble, would supersede the requirements of Subchapter C, Division 2 after the compliance date for the proposed new rules in Subchapter C, Division 4. Therefore, the commission proposes

new §117.1100(c) to avoid overlapping requirements from the two separate divisions.

Section 117.1103, Exemptions

The commission proposes a new §117.1103 that incorporates the exemptions in the existing §117.103, relating to exemptions for utility electric generation sources in ozone nonattainment areas, applicable to the Dallas-Fort Worth ozone nonattainment area. The commission proposes a new §117.1103(a) - (c) that incorporate the rule language in the existing §117.103(a) - (c). In addition, for proposed new §117.1103(c)(1), relating to emergency fuel oil firing exemptions, the commission proposes to omit reference to the Southwest Power Pool for the emergency fuel oil firing exemption provisions because the Southwest Power Pool area does not apply to the Dallas-Fort Worth ozone nonattainment area.

Section 117.1105, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.1105 that incorporates the rule language in the existing §117.105, relating to emission specifications for RACT, applicable to the Dallas-Fort Worth ozone nonattainment area. The commission proposes a new §117.1105(a) - (l) that incorporates the rule language in the existing §117.105(a) - (l).

The commission proposes a new equation in §117.1105(d) that incorporates the existing equation for calculating the rolling 24-hour heat input weighted average emission specification in the existing §117.105(d). The proposed new equation in §117.1105(d) presents the equation in a format consistent with other figures in Chapter 117 and provides a written description of all the terms used in the equation. In addition, for proposed new §117.1105(e), the commission proposes using auxiliary steam boilers as opposed to auxiliary boilers used in the existing language to be consistent with the definition in §117.10. For proposed new §117.1105(i), the commission proposes to change the word "ten" to the numeral "10" regarding the MW rating for stationary gas turbines subject to the CO emission specification in proposed new §117.1105(i). Finally, proposed new §117.1105(l) incorporates the rule language from existing §117.105(l) and (l)(2).

Section 117.1110, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.1110 relating to emission specifications for attainment demonstration, that incorporates the rule language in the existing §117.106, relating to emission specifications for attainment demonstrations, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.1110(a), relating to NO_x emission specifications, incorporates the emission specifications and rule language in the existing §117.106(b). In addition, for proposed new §117.1110(a)(1) and (2), the commission proposes to change large DFW system and small DFW system in existing §117.106(b) to large utility system and small utility system to be consistent with the proposed changes to the definitions in proposed new §117.10(24) and (44). Proposed new §117.1110(a)(1) incorporates the existing emission specification for boilers that are part of a large utility system, as defined in the proposed new §117.10(24), and proposed new §117.1110(a)(2) incorporates the existing emission specification for boilers that are part of a small utility system, as defined in proposed new §117.10(44). Both proposed new §117.1110(a)(1) and (2) incorporate the provisions from existing §117.106(b) concerning use of system cap and use of emission credits for compliance. In addition, proposed new §117.1110(a)(2) incorporates the provision in existing §117.106(b) that specifies that the annual heat input exemption is not applicable to a small utility system. The reference in existing §117.106(b) also incorrectly references §117.103(2) for this heat input exemption. Therefore, for proposed new §117.1110(a)(2), the commission proposes to revise the reference to cite proposed new §117.1103(a)(2), the correct reference for the annual heat input exemption.

The commission proposes a new §117.1110(b) that incorporates the rule language concerning related emissions in the existing §117.106(d). In addition, for proposed new §117.1110(b)(2), the commission proposes to change the emissions specification for ammonia from the word "ten" to the numeral "10." As previously discussed in this preamble, this change is necessary to ensure consistent enforcement of the emission specification. Finally, proposed new §117.1110(c), relating to compliance flexibility, that incorporates the rule language in the existing §117.106(e) and (e)(1) - (3).

Section 117.1115, Alternative System-Wide Emission Specifications

The commission proposes a new §117.1115 that incorporates the specifications in the existing §117.107, relating to alternative system-wide emission specifications, applicable to the Dallas-Fort Worth ozone nonattainment area.

The commission proposes a new §117.1115(a) - (d) that incorporates the rule language in the existing §117.107(a) - (d). In addition, for proposed new §117.1115, the commission is proposing to revise language in existing §117.107 referencing system-wide emission limit or system-wide emission limitation to specify system-wide emission specification. These changes are proposed to provide consistency and clarity in proposed new §117.1115 and to be consistent with the section title and the proposed change to the definition of system-wide emission limit in §117.10 discussed previously in this preamble.

Proposed new §117.1115(d) incorporates the rule language from existing §117.107(d). In addition, existing §117.107(d)(1) and (2) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new equations are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.1115(d)(1) incorporates the calculation for allowable system-wide NO_x emission specification for each affected utility boiler in the existing §117.107(d)(1). The proposed new equations in §117.1115(d)(2) incorporate the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.107(d)(2), as well as the existing equation for the in-stack NO_x concentration term in the existing §117.107(d)(2).

Section 117.1120, System Cap

The commission proposes a new §117.1120 that incorporates the requirements in the existing §117.108, relating to system cap, applicable to the Dallas-Fort Worth ozone nonattainment area.

The commission proposes a new §117.1120(a) - (k) that incorporates the rule language in the existing §117.108(a) - (k). In addition, the commission proposes new equations in §117.1120(c) that incorporate the equations in existing

§117.108(c) and present the equations in a format consistent with other equations in Chapter 117. The proposed new equations in §117.1120(c) include only the information applicable to the Dallas-Fort Worth ozone nonattainment area. The proposed new equation in §117.1120(c)(1) incorporates the equation for the rolling 30-day average emission cap in the existing §117.108(c)(1). The proposed new equation in §117.1120(c)(2) incorporates the equation for the maximum daily emission cap in the existing §117.108(c)(2).

The commission proposes a new §117.1120(k) that incorporates the requirements of the existing §117.108(k). The new §117.1120(k) changes source cap to system cap to be consistent with the section. Also, for proposed new §117.1120(k), the commission proposes to replace upset period with the language "emissions events, as defined in §101.1 of this title (relating to Definitions)." This proposed change is necessary to update the rule to current terminology used by the commission.

The commission proposes a new §117.1120(l) relating to the use of emissions credits, that incorporates the rule language from existing §117.109, concerning system cap flexibility. Proposed new §117.1120(m), relating to the sale and transfer of an electric generating system, incorporates the rule language from existing §117.110, concerning change of ownership.

Section 117.1125, Alternative Case Specific Specifications

The commission proposes a new §117.1125 that incorporates the specifications in the existing §117.121, relating to alternative case specific specifications, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.1125(a) and (b) incorporate the rule language in the existing §117.121(a) and (b). In addition, the proposed new §117.1125(a) omits the provision in the existing §117.121(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.1135, Initial Demonstration of Compliance

The commission proposes a new §117.1135 that incorporates the specifications in the existing §117.111, relating to initial demonstration of compliance, applicable to the Dallas-Fort Worth ozone nonattainment area.

Section 117.1140, Continuous Demonstration of Compliance

The commission proposes a new §117.1140 that incorporates the rule language in existing §117.113, relating to continuous demonstration of compliance, applicable to the Dallas-Fort Worth ozone nonattainment area.

Proposed new §117.1140(a) incorporates the rule language in the existing §117.113(a), relating to NO_x monitoring. Proposed new §117.1140(b) incorporates the CO monitoring requirements from existing §117.113(b). The specific requirements and methods in the existing §117.113(b) appear in proposed new §117.8120, relating to CO monitoring, and subsequently have been omitted from proposed new §117.1140(b) and replaced with a reference to the proposed new §117.8120. Similarly, the requirements for CEMS in the existing §117.113(c)(1) and (2) appear in the proposed new §117.8110(a), relating to emission monitoring system requirements for utility electric generation sources. Therefore, the proposed new §117.1140(c) omits the specific requirements of existing §117.113(c)(1) and (2) and references the proposed new §117.8110(a).

Proposed new §117.1140(d) incorporates the rule language from existing §117.113(d), concerning acid rain peaking units. Proposed new §117.1140(e) incorporates the rule language from existing §117.113(e), concerning auxiliary boilers. In addition, for proposed new §117.1140(e), the commission proposes to revise auxiliary boiler to auxiliary steam boiler to be consistent with the definition in §117.10.

The commission proposes a new §117.1140(f) that incorporates the requirements for PEMS from existing §117.113(f). Proposed new §117.1140(f)(1) incorporates the rule language from existing §117.113(f)(1). The requirements in the existing §117.113(f)(2) - (4) appear in the proposed new §117.8110(b), relating to emission monitoring system requirements for utility electric generation sources, and subsequently have been omitted from the proposed new §117.1140(f) and replaced with a reference to §117.8110(b) in proposed new §117.1140(f)(2).

Proposed new §117.1140(g) - (j) incorporate the rule language applicable to the Dallas-Fort Worth ozone nonattainment area from existing §117.113(g) - (j), respectively. Proposed new §117.1140(k) incorporates the rule language from existing §117.113(k) and (k)(1), and proposed new §117.1140(l) incorporates the rule language from existing §117.113(l).

Section 117.1145, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.1145 that incorporates the rule language in the existing §117.119, relating to notification, recordkeeping, and reporting requirements, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.1145(a) - (e) incorporate the rule language from existing §117.119(a) - (e). In addition, for proposed new §117.1145(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.1145(a). The commission is soliciting comments on this specific change to the language in existing §117.119(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed.

Section 117.1152, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.1152 that incorporates the requirements in the existing §117.115, relating to final control plan procedures for RACT, applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.1152(a), (b), and (c) incorporate the rule language from existing §117.115(a), (b) and (d), respectively. In addition, the commission proposes to revise the section title reference in proposed new §117.1152(a)(2)(B) to reference the correct title "Alternative System-Wide Emission Specifications." Also, the commission proposes to omit the existing §117.115(c), relating to electronic submission and formatting requirements for the control plan, from the proposed new §117.1152. Existing §117.115 and proposed new §117.1152 specify the content requirements for the control plan. Therefore, a mandatory format for the control plan information is not necessary.

Section 117.1154, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.1154 that incorporates the rule language in existing §117.116, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Dallas-Fort Worth ozone nonattainment area.

Section 117.1156, Revision of Final Control Plan

The commission proposes a new §117.1156 that incorporates the requirements in the existing §117.117, relating to revision of final control plan, applicable to the Dallas-Fort Worth ozone nonattainment area.

DIVISION 3, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

The commission proposes a new Chapter 117, Subchapter C, Division 3, entitled Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources, that incorporates the provisions in existing Chapter 117, Subchapter B, Division 1 applicable to utility electric generation sources in the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.1200, Applicability

The commission proposes a new §117.1200, that incorporates the provisions in the existing §117.101, relating to applicability, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1200(a) incorporates the rule language in the existing §117.101(a) and (a)(1) - (4). The list of applicable units in existing §117.101(a)(1) - (4), including utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts, is incorporated into the proposed new §117.1200(a). Proposed new §117.1200(a)(1) and (2) incorporate the language regarding owners or operators of the applicable units. Proposed new §117.1200(a)(1) incorporates the rule language from existing §117.101(a) concerning the applicability related to units owned or operated by a municipality or a PUC-regulated utility. In addition, the commission proposes a new §117.1200(a)(2) concerning the applicability of the division to electric power generating systems owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility. As previously indicated in this preamble, this proposed change is intended to clarify the applicability of the rule and does not expand the applicability of the rule. The commission proposes a new §117.1200(b) that incorporates the rule language in existing §117.101(b).

Section 117.1203, Exemptions

The commission proposes a new §117.1203 that incorporates the exemptions in the existing §117.103, relating to exemptions for utility electric generation sources in ozone nonattainment areas, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1203(a) - (c) incorporate the exemptions in the existing §117.103(a) - (c). In addition, for proposed new §117.1203(c)(1), the commission proposes to revise the existing language in §117.103(c)(1) to expand the provisions relating to emergency fuel oil firing exemptions to emergency operating conditions declared by the Southeastern Electric Reliability Council, and to remove reference to the Southwest Power Pool. This proposed change is necessary because the Southeastern Electric Reliability Council area does overlap the Houston-Galveston-Brazoria ozone nonattainment area. The Southwest Power Pool area does not apply to the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.1205, Emission Specifications for Reasonably Available Control Technology (RACT)

The commission proposes a new §117.1205 that incorporates the specifications in the existing §117.105, relating to emission specifications for RACT, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. The commission proposes a new §117.1205(a) - (l) that incorporates the rule language in the existing §117.105(a) - (l).

The commission proposes a new equation in §117.1205(d) that incorporates the existing equation for calculating the rolling 24-hour heat input weighted average emission specification in the existing §117.105(d). The proposed new equation in §117.1205(d) presents the equation in a format consistent with other figures in Chapter 117 and provides a written description of all the terms used in the equation. In addition, for proposed new §117.1205(e), the commission proposes using auxiliary steam boilers as opposed to auxiliary boilers used in the existing language to be consistent with the definition in §117.10. For proposed new §117.1205(i), the commission proposes to change the word "ten" to the numeral "10" regarding the MW rating for stationary gas turbines subject to the CO emission specification in proposed new §117.1205(i). Finally, proposed new §117.1205(l) incorporates the rule language from existing §117.105(l) and (l)(3).

Section 117.1210, Emission Specifications for Attainment Demonstration

The commission proposes a new §117.1210 that incorporates the rule language in the existing §117.106, relating to emission specifications for attainment demonstrations, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed a new §117.1210(a) incorporates the specifications in the existing §117.106(c). The catchline is also proposed to be changed to "Emission specifications for the Mass Emission Cap and Trade Program" to more accurately reflect the purpose of the emission specifications in combination with the Mass Emission Cap and Trade Program in Chapter 101, Subchapter H, Division 3. Proposed new §117.1210(b) incorporates the rule language concerning related emissions in the existing §117.106(d). In addition, for proposed new §117.1210(b)(2), the commission proposes to change the emissions specification for ammonia from the word "ten" to the numeral "10." Consistent with EPA guidance, the commission normally enforces emission test and monitoring results to the same significant figures as the emission specifications. Using the numeral "10" for the ammonia emission specification would ensure consistent enforcement of the emission specification.

Finally, the commission proposes a new §117.1210(c) and (c)(1) - (4), relating to compliance flexibility, that incorporates the rule language in the existing §117.106(e) and (e)(2) - (4).

Section 117.1215, Alternative System-Wide Emission Specifications

The commission proposes a new §117.1215 that incorporates the rule language in the existing §117.107, relating to alternative system-wide emission specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

The commission proposes a new §117.1215(a) - (e) that incorporates the rule language in the existing §117.107(a) - (e). In addition, for proposed new §117.1215, the commission is proposing to revise language in existing §117.107 referencing system-wide emission limit or system-wide emission limitation to specify system-wide emission specification. These changes are proposed to provide consistency and clarity in proposed new §117.1215 and to be consistent with the section title and the proposed change to the definition of system-wide emission limit in §117.10 discussed previously in this preamble.

Proposed new §117.1215(d) incorporates the rule language from existing §117.107(d). In addition, existing §117.107(d)(1) and (2) include required calculations written in paragraph form rather than in equation form. The commission is proposing to reformat the calculations in a mathematical formula rather than the paragraph form to present the equations in a format consistent with other equations in Chapter 117 and provide a written description of all the terms used in the equation. The proposed new equations are identical in content to the existing required calculations in paragraph form. The proposed new equation in §117.1215(d)(1) incorporates the calculation for allowable system-wide NO_x emission specification for each affected utility boiler in the existing §117.107(d)(1). The proposed new equations in §117.1215(d)(2) incorporate the calculation for the allowable NO_x emission rate for each affected stationary gas turbine in the existing §117.107(d)(2) as well as the existing equation for the in-stack NO_x concentration term in the existing §117.107(d)(2).

The commission proposes a new §117.1215(e) that incorporates the rule language in the existing §117.107(e). In addition, for proposed new §117.1215(e), the commission proposes using system-wide as opposed to plant-wide that is used in the existing language to be consistent with the section.

Section 117.1220, System Cap

The commission proposes a new §117.1220 that incorporates the rule language in the existing §117.108, relating to system cap, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

The commission proposes a new §117.1220(a) - (k) that incorporates the rule language in the existing §117.108(a) - (k). For proposed new §117.1220(b), the commission proposes to revise the language in existing §117.108(b) that specifies "that would otherwise be subject to the NO_x emission rates of §117.106 . . .." Proposed new §117.1220(b) specifies "that is subject to §117.1210(a) . . .." As previously discussed in this preamble, this change is necessary to clarify the commission's intent regarding units subject to the Mass Emission Cap and Trade Program. In addition, the commission proposes new equations in §117.1220(c) that incorporate the equations in existing §117.108(c) and present the equations in a format consistent with other equations in Chapter 117. The proposed new equations in §117.1220(c) include only the information applicable to the Houston-Galveston-Brazoria ozone nonattainment area. The proposed new equation in §117.1220(c)(1) incorporates the equation for the rolling 30-day average emission cap in the existing §117.108(c)(1). The proposed new equation in §117.1220(c)(2) incorporates the equation for the maximum daily emission cap in the existing §117.108(c)(2). The commission proposes a new §117.1220(k) that incorporates the requirements of the existing §117.108(k). The new §117.1220(k) changes source cap to system cap to be consistent with the section. Also, for proposed new §117.1220(k), the commission proposes to replace upset period with the language "emissions event, as defined in §101.1 of this title (relating to Definitions) . . .." This proposed change is necessary to update the rule to current terminology used by the commission.

The commission proposes a new §117.1220(l), relating to the use of emissions credits, that incorporates the rule language from existing §117.109, System Cap Flexibility. Proposed new §117.1220(m), relating to the sale and transfer of an electric generating system, incorporates the rule language from existing §117.110, Change of Ownership - System Cap.

Section 117.1225, Alternative Case Specific Specifications

The commission proposes a new §117.1225 that incorporates the rule language in the existing §117.121, relating to alternative case specific specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1225(a) and (b) incorporates the rule language in the existing §117.121(a) and (b). In addition, the proposed new §117.1225(a) omits the provision in the existing §117.121(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.1235, Initial Demonstration of Compliance

The commission proposes a new §117.1235 that incorporates the rule language in the existing §117.111, relating to initial demonstration of compliance, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.1240, Continuous Demonstration of Compliance

The commission proposes a new §117.1240 that incorporates the rule language and requirements applicable to the Houston-Galveston-Brazoria ozone nonattainment area from existing §117.113, relating to initial demonstration of compliance, as well as the rule language and requirements from existing §117.114.

The commission proposes a new §117.1240(a) that incorporates the rule language in the existing §117.113(a), relating to NO_x monitoring. Proposed new §117.1240(b) incorporates the CO monitoring requirements from existing §117.113(b). The specific requirements and methods in the existing §117.113(b) appear in the proposed new §117.8120, relating to CO monitoring, and subsequently have been omitted from proposed new §117.1240(b) and replaced with a reference to the proposed new §117.8120.

The commission proposes a new §117.1240(c) that incorporates the rule language and ammonia monitoring requirements in existing §117.114(a)(4). The proposed new §117.1240(c) specifies that the owner or operator of units subject to the ammonia emission limits in the proposed new §117.1210(b)(2) shall comply with the ammonia monitoring requirements of the proposed new §117.8130. The specific ammonia monitoring procedures in existing §117.114(a)(4) are incorporated in proposed new §117.8130.

The requirements for CEMS in the existing §117.113(c)(1) and (2) appear in the proposed new §117.8110(a), relating to emission monitoring system requirements for utility electric generation sources. Therefore, the proposed new §117.1240(d) omits the specific requirements of existing §117.113(c)(1) and (2). Proposed new §117.1240(d)(1) refers to the proposed new §117.8110(a) for CEMS requirements applicable to units subject to the RACT emission specifications of proposed new §117.1205. Proposed new §117.1240(d)(2) incorporates the CEMS requirements for units subject to the emission specifications for attainment demonstration in proposed new §117.1210. Proposed new §117.1240(d)(2)(A) references to the proposed new §117.8110(a) and proposed new §117.1240(d)(2)(B) - (D) incorporate the existing rule language and CEMS requirements in existing §117.113(c)(3) that are specific to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1240(e) incorporates the rule language from existing §117.113(d), concerning acid rain peaking units. Proposed new §117.1240(f) incorporates the rule language from existing §117.113(e), concerning auxiliary boilers. In addition, for proposed new §117.1240(f), the commission proposes to

revise auxiliary boiler to auxiliary steam boiler to be consistent with the definition in §117.10.

The commission proposes a new §117.1240(g) that incorporates the requirements for PEMS from existing §117.113(f). Proposed new §117.1240(g)(1) incorporates the rule language from existing §117.113(f)(1). The requirements in the existing §117.113(f)(2) - (4) appear in the proposed new §117.8110(b), relating to emission monitoring system requirements for utility electric generation sources, and subsequently have been omitted from the proposed new §117.1240(g) and replaced with a reference to §117.8110(b) in proposed new §117.1240(g)(2).

Proposed new §117.1240(h) - (m) incorporate the rule language applicable to the Houston-Galveston-Brazoria ozone nonattainment area from existing §117.113(g) - (l), respectively. Proposed new §117.1240(n) incorporates the rule language from existing §117.114(b), and proposed new §117.1240(o) incorporates the rule language from existing §117.114(c). In addition, for proposed new §117.1240(o), the commission proposes to add language to specify "The owner or operator of units subject to §117.1210(a) of this title shall comply with the following." This change is necessary because the provisions of §117.114(c) only apply to sources subject to existing §117.106(c) and proposed new §117.1210(a).

The provisions in existing §117.114(a)(1) - (3), concerning monitoring requirements for NO_x, CO, and totalizing fuel flow meters, are redundant with existing requirements in §117.113 and proposed new §117.1240. Therefore, existing §117.114(a)(1) - (3) are not proposed to be incorporated in the proposed new §117.1240. Rule language from existing §117.114(a)(4)(E), concerning recordkeeping for ammonia monitoring, is proposed to be incorporated in proposed new §117.1245, Notification, Recordkeeping, and Reporting Requirements, to consolidate the recordkeeping requirements in the appropriate section.

Section 117.1245, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.1245 that incorporates the rule language in the existing §117.119, relating to notification, recordkeeping, and reporting requirements, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1245(a) - (e) incorporate the requirements in the existing §117.119(a) - (e). In addition, for proposed new §117.1045(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.1045(a). The commission is soliciting comments on this specific change to the language in existing §117.119(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed. Finally, the commission proposes a new §117.1245(e)(8) that incorporates the recordkeeping requirement of the existing §117.114(a)(5)(E) associated with ammonia monitoring requirements.

Section 117.1252, Final Control Plan Procedures for Reasonably Available Control Technology

The commission proposes a new §117.1252 that incorporates the requirements in the existing §117.115, relating to final control plan procedures for RACT, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1252(a), (b), and (c) incorporate the rule language from existing §117.115(a), (b) and (d), respectively. In addition, the commission proposes to omit the existing §117.115(c), relating to electronic submission and formatting requirements for the control plan, from the proposed new §117.1252. Existing §117.115 and proposed new §117.1252 specify the content requirements for the control plan. Therefore, a mandatory format for the control plan information is not necessary.

Section 117.1254, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

The commission proposes a new §117.1254 that incorporates the rule language in the existing §117.116, relating to final control plan procedures for attainment demonstration emission specifications, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.1254(a) incorporates the rule language from existing §117.116(a). Proposed new §117.1254(a)(1)(A) that incorporates the existing §117.116(a)(1)(D), and replaces the existing §117.116(a)(1)(A). Proposed new §117.1254(a)(1)(B) and (C) incorporate the existing §117.116(a)(1)(B) and (D). Proposed new §117.1254(a)(2) - (5) incorporate rule language from the existing §117.116(a)(2) - (5), respectively. Finally, the commission proposes new §117.1254(b) and (c) that incorporate the rule language from existing §117.116(b) and (c), respectively.

Section 117.1256, Revision of Final Control Plan

The commission proposes a new §117.1256 that incorporates the requirements in the existing §117.117, relating to revision of final control plan, applicable to the Houston-Galveston-Brazoria ozone nonattainment area.

DIVISION 4, DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

The commission proposes a new Chapter 117, Subchapter C, Division 4, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, that includes new rules applicable to utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. These proposed new rules are one part of the commission's Dallas-Fort Worth eight-hour ozone attainment demonstration and are necessary for the area to demonstrate attainment.

Section 117.1300, Applicability

Proposed new §117.1300, concerning applicability, identifies the facilities and unit types in the Dallas-Fort Worth eight-hour ozone nonattainment area that would be subject to this proposed rule. Proposed subsection (a) specifies that the division applies to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system that is owned or operated by a municipality or a PUC-regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC, or owned be an electric cooperative, independent power producer, municipality, river authority, or public utility operating in the Dallas-Fort Worth eight-hour ozone nonattainment area.

Proposed subsection (b) specifies that the provisions of the propose rule are applicable for the life of each affected unit within an electric power generating system or until the rule, or sections of the rule that are applicable to an affected unit, are rescinded.

Section 117.1303, Exemptions

Proposed new §117.1303 specifies the unit types and conditions that qualify for exemption from the specifications of the proposed rule. Proposed new §117.1303(a), concerning exemptions from emission specifications for attainment demonstration, specifies the units exempt from the provisions of proposed §117.1310 and §117.1340, except as may be specified in proposed §117.1340(i) or (j). Units proposed for exemption include any new auxiliary steam boiler or stationary gas turbines placed into service after November 15, 1992, any auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year, or stationary gas turbines and engines used solely to power other engines or gas turbines during startups or that are demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

Proposed new §117.1303(b) specifies the exemptions for emergency fuel oil firing conditions. Proposed new §117.1303(b)(1) specifies that the emissions specifications of proposed §117.1310 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

Proposed new §117.1303(b)(2) requires the owner or operator of an affected unit to provide the executive director, and any local air pollution control agency having jurisdiction, verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

Proposed new §117.1303(b)(3) specifies that the owner or operator shall provide final written notification, as soon as possible but no later than two weeks after the termination of emergency fuel oil firing, to the executive director and any local air pollution control agency having jurisdiction. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

Section 117.1310, Emission Specifications for Eight-Hour Attainment Demonstration

The commission proposes a new section §117.1310 that specifies the proposed emission specifications for eight-hour attainment demonstration. The proposed new §117.1310(a) establishes proposed NO_x emissions specifications for units in the Dallas-Fort Worth eight-hour ozone nonattainment area that would be subject to this proposed rulemaking. In addition, emission specifications for RACT from existing §117.105 are proposed to satisfy RACT requirements for auxiliary steam boilers and stationary gas turbines in the Dallas-Fort Worth eight-hour ozone nonattainment area.

Proposed new §117.1310(a)(1) establishes an emission specification of 0.06 lb/MMBtu heat input from utility boilers that are part of a small utility system, as defined in §117.10. A NO_x emission specification of 0.033 lb/MMBtu heat input is proposed for utility boilers that are part of a large utility system, as defined in §117.10. The averaging times for these proposed emission specifications are on a rolling 24-hour average basis during the months of March through October of each calendar year, and on a rolling 30-day average basis during the months of November, December, January, and February of each calendar year. In addition, the commission is proposing a new output, or efficiency-based emission specification of 0.50 pounds per megawatt-hour output on an annual average basis.

Proposed new §117.1310(a)(2) specifies emission specifications for auxiliary steam boilers. Proposed subparagraph (A) establishes an emission specification of 0.26 lb/MMBtu heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil. Proposed subparagraph (B) establishes an emission specification of 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only. The heat input weighted average of the applicable emission specifications specified in subparagraphs (A) and (B) on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil is specified in proposed subparagraph (C). Proposed new subparagraph (C) also specifies the equation for calculating the emission specification while firing both natural gas and fuel oil. Also, for each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 CFR Part 60, Subparts D, Db, or Dc, the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subparagraph is not subject to the emission specifications of the subparagraphs of this paragraph. These emission specifications are identical to the current emission specifications for auxiliary steam boilers regulated under existing §117.105, concerning emission specifications for RACT, and the equation in proposed subparagraph (C) is identical to the equation provided in existing §117.105 for calculating the emission specification while firing both natural gas and fuel oil.

Proposed new §117.1310(a)(3) specifies emission specifications for stationary gas turbines. Proposed new subparagraph (A) establishes two emission specifications for stationary gas turbines with a MW rating greater than or equal to 30 MW and an annual electric output in megawatt-hr (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit. A NO_x emission specification of 42 ppmv at 15% O_2, dry basis, on a block one-hour average, is proposed for stationary gas turbines while firing natural gas, and an emission specification of 65 ppmv at 15% O_2, dry basis, is proposed for stationary gas turbines while firing fuel oil. Proposed subparagraph (B) establishes emission specifications for stationary gas turbines used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit. The proposed NO_x emission specification under subparagraph (B) are 0.20 lb/MMBtu heat input, on a block one-hour average, while firing natural gas, and 0.30 lb/MMBtu heat input while firing fuel oil. These emission specifications are identical to the current RACT emission specifications for stationary gas turbines regulated under existing §117.105.

Proposed new §117.1310(b) establishes emission specifications of related emissions. For utility boilers or auxiliary steam boilers, a CO limit of 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units and 0.31 lb/MMBtu heat input for oil-fired units), based on a one-hour average for units not equipped with a CEMS or PEMS for CO or a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO. For any stationary gas turbine with a MW rating greater than or equal to 10 MW, proposed §117.1310(b) establishes a CO emis-

sion specification of 132 ppmv at 15% O_2, dry basis. Proposed §117.1310(b)(2) specifies ammonia emission specifications for units that inject urea or ammonia into the exhaust stream for NO_x control, of 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia. Units not subject to the ammonia emission specification in proposed §117.1310(b)(2)(A) are limited to a 20 ppmv ammonia emission specification under subparagraph (B), based on a block one-hour averaging period. This 20 ppmv ammonia emission specification is consistent with the current ammonia emission specification from existing §117.105 for RACT.

Proposed new §117.1310(c), concerning compliance flexibility, specifies that an owner or operator may use §117.9800 to comply with the NO_x emission specifications of this section. The subsection also specifies that proposed §117.1325 is not an applicable method of compliance with the NO_x emission specifications for this section. An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of proposed §117.1310 in accordance with proposed §117.1325.

Section 117.1325, Alternative Case Specific Specifications

Proposed new §117.1325 specifies that where a person can demonstrate that an affected unit cannot attain the applicable CO or ammonia emission specifications of proposed §117.1310(b), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.1310(b) for that unit. Proposed §117.1325(a) specifies that the executive director shall consider on a case-by-case basis the technological and economic circumstances of the individual unit, shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the NO_x emission specifications of §117.1310, as applicable, and in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant that the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

Proposed new §117.1325(b) specifies that any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. Proposed new subsection (b) also specifies that the requirements of §50.139 apply and that executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for EPA approval in some cases.

Section 117.1335, Initial Demonstration of Compliance

Proposed new §117.1335 specifies the procedures for the initial demonstration of compliance for owners or operators of units subject to the proposed rule. Proposed §117.1335(a) specifies that the owner or operator shall test for NO_x, CO, and O_2 emissions. Also, for units that inject urea or ammonia into the exhaust stream for NO_x control, the owner or operator must test for ammonia emissions. Testing must be performed in accordance with the schedules specified in proposed new §117.9130.

Proposed §117.1335(b) specifies that the tests required by subsection (a) must be used for determination of initial compliance with the proposed emission specifications. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 CFR Part 60, Appendix A reference methods, the report must contain the information specified in proposed new §117.8010.

Proposed new §117.1335(c) specifies that CEMS or PEMS required by proposed new §117.1340 must be installed and operational before testing under subsection (a). Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

Proposed new §117.1335(d) specifies initial compliance with the emission specifications for units operating with CEMS or PEMS in accordance with proposed §117.1340 must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS. Proposed paragraphs (1) - (5) specify the proper monitoring procedures to be followed for the different averaging times and units specified in the emission specifications of proposed §117.1310.

Section 117.1340, Continuous Demonstration of Compliance

Proposed new §117.1340 details the operating, monitoring, and testing required by owners and operators of units subject to the emissions specifications of proposed §117.1310 in order to demonstrate continuous compliance.

Proposed new §117.1340(a) requires the owner or operator of each unit subject to the emission specifications of this division to install, calibrate, maintain, and operate a CEMS, PEMS, or other system specified in proposed §117.1340, to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the RATA relative accuracy requirements of 40 CFR Part 75, Appendix B, Figure 2, except the concentration options (ppmv and lb/MMBtu) do not apply. Under proposed subsection (a), each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value.

Proposed new §117.1340(b), concerning CO monitoring, specifies the owner or operator shall monitor CO exhaust emissions from each unit subject to the emission specifications of proposed §117.1310, using one or more of the methods specified in proposed §117.8120. Proposed new §117.1340(c) requires the owner or operator of units that are subject to the ammonia emission specification of proposed new §117.1310(b)(2)(A) to comply with the ammonia monitoring requirements of proposed new §117.8130.

Proposed new §117.1340(d), concerning CEMS requirements, specifies that the owner or operator of any CEMS used to meet a pollutant monitoring requirement of proposed §117.1340 shall comply with the requirements of §117.8110(a).

Proposed new §117.1340(e) provides alternatives for NO_x monitoring for acid rain peaking units, as defined in 40 CFR §72.2, which are consistent with the alternatives of existing §117.113(d). Proposed new §117.1340(f) provides alternative NO_x monitoring provisions for auxiliary steam boilers. The owner or operator of each auxiliary steam boiler must either install, calibrate, maintain, and operate a CEMS in accordance with proposed new §117.1340, or comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of proposed new §117.440.

Proposed new §117.1340(g) details the requirements for any PEMS used to meet a pollutant monitoring requirement of this section. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the proposed emis-

sion specifications. The PEMS must predict the pollutant emissions in the units of the applicable emission specification, and must meet the requirements of proposed new §117.8110(b).

Proposed new §117.1340(h), regarding stationary gas turbine monitoring, specifies the owner or operator of each stationary gas turbine subject to the emission specifications of §117.1310 of this title, instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements. For stationary gas turbines rated less than 30 MW or peaking gas turbines that use steam or water injection to comply with the emission specifications of proposed new §117.1310(a)(3), the owner or operator may either install, calibrate, maintain and operate a CEMS or PEMS in compliance with proposed §117.1340, or install, calibrate, maintain, and operate a continuous monitoring system, accurate to within 5%, to monitor and record the average hourly fuel and steam or water consumption. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of proposed §117.1310. For stationary gas turbines subject to the emission specifications of proposed §117.1310 of this title, the owner or operator may install, calibrate, maintain and operate a CEMS or PEMS in compliance with proposed §117.1340.

Proposed new §117.1340(i), concerning totalizing fuel flow meters, specifies the owner or operator of units listed in subsection (i) shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units that the totalizing fuel flow meter requirements of proposed subsection (i) apply to include any unit subject to the emission specifications of proposed §117.1310, any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year, and any unit claimed exempt from the emission specifications of using the low annual capacity factor exemption of proposed §117.1303(a)(2).

Proposed new §117.1340(j) specifies the owner or operator of any stationary gas turbine using the exemption of proposed §117.1303(a)(3) shall record the operating time with an elapsed run time meter.

Proposed new §117.1340(k), concerning monitoring for output-based NO_x emission specification, is a new eight-hour monitoring requirement detailing the monitoring required for the owner or operator of any unit that complies with the optional output-based NO_x emission specification in proposed new §117.1310(a)(1)(C). The proposed subsection requires the owner or operator to install, calibrate, maintain, and operate a system to continuously monitor, at least once every 15 minutes, and record the gross energy production of the unit in megawatt-hours (MW-hr). In addition, for each hour of operation, the owner or operator shall determine the total mass emission of NO_x, in pounds, from the unit using the NO_x monitoring requirements of proposed §117.1340(a) and the fuel monitoring requirements of proposed §117.1340(i). The owner or operator shall also, for each hour of operation, calculate and record the NO_x emissions in pounds per megawatt-hour.

Proposed new §117.1340(l), concerning loss of exemption, specifies the requirements for owners or operators of units claimed exempt under proposed new §117.1303(a)(2) or (3) that have lost exemption status because the applicable limit is exceeded.

Proposed new §117.1340(m), concerning data used for compliance, specifies that, after the initial demonstration of compliance required by proposed new §117.1335, the methods required in proposed new §117.1340 must be used for demonstrating continuous compliance with the emission specifications in proposed new §117.1310.

Section 117.1345, Notification, Recordkeeping, and Reporting Requirements

The proposed new §117.1345 specifies the notification, recordkeeping, and reporting requirements for owners or operators of units subject to the emission specifications of proposed §117.1310.

Proposed new §117.1345(a), concerning startup and shutdown records, specifies that for units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection upon request by the executive director, EPA, and any local air pollution control agency having jurisdiction. These records include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; gross and net energy production in MW-hr; and the date, time, and duration of the event.

Proposed new §117.1345(b), concerning notification, specifies the owner or operator of a unit subject to the emission specifications in proposed §117.1310 shall submit written notification to the appropriate regional office and any local air pollution control agency having jurisdiction of the date of any testing or any CEMS or PEMS performance evaluation conducted under §117.1335 or §117.1340 at least 15 days prior to such date.

Proposed new §117.1345(c) specifies the owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1335 or any CEMS or PEMS performance evaluation conducted under §117.1340. Reports must be submitted within 60 days after completion of such testing or evaluation, and not later than the appropriate compliance schedules specified in proposed new §117.9130.

Proposed new §117.1345(d), concerning semiannual reports, specifies the owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under proposed §117.1340 shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. The content requirements for the written reports are specified in proposed new paragraphs (1) - (5).

Proposed new §117.1345(e) specifies the recordkeeping requirement for the owner or operator of a unit subject to the proposed new Subchapter C, Division 4. Records must be kept for a period of at least five years and made available for inspection upon request by the executive director, EPA, or local air pollution control agencies having jurisdiction. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission

specifications based on low annual capacity factor, monthly. Proposed new paragraph (1) requires records of emission rates in units of the applicable standards. Proposed new paragraph (2) requires records of gross energy production in MW-hr, except for auxiliary steam boilers and as specified in proposed new paragraph (8). Records of the quantity and type of fuel burned are required by proposed new paragraph (3), and the injection rate of reactant chemicals (if applicable) are required by proposed new paragraph (4). Proposed new paragraph (5) requires records of emission monitoring data, in accordance with proposed §117.1340, including: specified information regarding any monitoring system malfunctions; results of certification testing, evaluations, calibrations, checks, adjustments, and maintenance of monitoring systems; and actual emissions or operating parameter measurements, as applicable. Proposed new paragraphs (6) and (7) require records of performance testing results and hours of operation, respectively. Finally, proposed new paragraph (8) requires additional records for any unit that the owner or operator elects to comply with the output-based emission specification in §117.1310(a)(1)(C). The additional records include hourly records of the gross energy production in MW-hr, as well as records of hourly and annual average NO_x emissions in lb/MW-hr. In addition, proposed new paragraph (8) specifies that the averaging period for the annual average NO_x emissions in lb/MW-hr, for demonstrating continuous compliance is from January 1 through December 31 of each calendar year, beginning on January 1, 2010. This averaging period creates a temporary overlap with the initial demonstration of compliance period in proposed new §117.1335, but is necessary to reset the averaging period to a calendar-year basis.

Section 117.1350, Initial Control Plan Procedures

Proposed new §117.1350 requires the owner or operator of any unit in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to proposed new §117.1310 to submit an initial control plan. Proposed new subsection (a) requires the control plan to include a list of all combustion units at the account that are listed in §117.1310. For each unit, the list must include the maximum rated capacity, anticipated annual capacity factor, estimated or measured NO_x emission data in the units associated with the category of equipment from §117.1310, the method of determination for the NO_x emission data, the facility identification number and emission point number as submitted to the Industrial Emissions Assessment Section of the commission, and the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit. The list must also include identification of all units with a claimed exemption from the emission specifications in proposed §117.1310 and the rule basis for the claimed exemption, a list of units to be controlled and the type of control to be applied for each unit, including an anticipated construction schedule. For units required to install totalizing fuel flow meters in accordance with proposed §117.1340, the plan must indicate whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this proposed rule. For units required to install CEMS or PEMS, the plan must indicate whether the systems are currently in operation, and if so, whether they have been installed as a result of the requirements of this proposed rule.

Proposed new subsection (b) specifies that the initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for initial control plans in proposed new §117.9130.

Finally, proposed new subsection (c) specifies that for units located in Dallas, Denton, Collin, and Tarrant Counties subject to proposed new §117.1110, the owner or operator may elect to submit the most recent revision of the final control plan required by proposed new §117.1154 in lieu of the initial control plan required by proposed §117.1350(a).

Section 117.1354, Final Control Plan Procedures for Attainment Demonstration Emission Specifications

Proposed new §117.1354 requires the owner or operator of utility boilers listed in proposed new §117.1300 at a major source of NO_x to submit a final control plan to show compliance with the requirements of proposed new §117.1310. The final control plans must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office. As specified in proposed new §117.1354(a), the report must include: the methods of NO_x control for each utility boiler; the emissions measured by testing required in proposed §117.1335; the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test or RATA report required by §117.1335 not being submitted concurrently with the final compliance report; and the specific rule citation for any utility boiler with a claimed exemption. Proposed new §117.1354(b) specifies that the report must be submitted by the applicable date specified for final control plans in proposed new §117.9130.

Section 117.1356, Revision of Final Control Plan

Proposed new §117.1356 specifies the conditions under which a revised final control plan may be submitted by the owner or operator. The revised final control plan may be submitted along with any required permit applications. The section specifies that such a plan must adhere to the requirements and the final compliance dates, and that replacement new units may be included in the control plan. The revision of the final control plan is subject to the review and approval of the executive director.

SUBCHAPTER D, COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

The commission proposes a new Chapter 117, Subchapter D, entitled Combustion Control at Minor Sources in Ozone Nonattainment Areas, that incorporates the rule language from the existing Chapter 117, Subchapter D, Small Combustion Sources, Division 2, Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources.

In addition, the commission proposes a new Subchapter D, Division 2, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, that includes new rule language and requirements associated with minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. The new Subchapter D, Division 2 is proposed as a part of the commission's eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area and is necessary for the area to demonstrate attainment.

DIVISION 1, HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

The commission proposes a new Subchapter D, Division 1, entitled Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources, that incorporates the rule language from existing Subchapter D, Division 2. The existing Subchapter D, Division 2, is only applicable in the Houston-Galveston-Brazoria ozone nonattainment area.

Section 117.2000, Applicability

The commission proposes a new §117.2000 that incorporates the applicability rule language from existing §117.471.

Section 117.2003, Exemptions

The commission proposes a new §117.2003 that incorporates the exemption rule language from existing §117.473.

Section 117.2010, Emission Specifications

The commission proposes a new §117.2010 that incorporates the rule language from existing §117.475, concerning emission specifications. Proposed new §117.2010(a) - (i) incorporate the rule language from existing §117.475(a) - (i), respectively. In addition, for proposed new §117.2010(i)(2), the commission proposes to change the emissions specification for ammonia from the word "ten" to the numeral "10." Consistent with EPA guidance, the commission normally enforces emission test and monitoring results to the same significant figures as the emission specifications. Using the numeral "10" for the ammonia emission specification would ensure consistent enforcement of the emission specification.

Section 117.2025, Alternative Case Specific Specifications

The commission proposes a new §117.2025 that incorporates the rule language in the existing §117.481, relating to alternative case specific specifications. Proposed new §117.2025(a) and (b) incorporate the rule language in the existing §117.481(a) and (b), respectively. In addition, proposed new §117.2025(a) omits the existing §117.481(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.2030, Operating Requirements

The commission proposes a new §117.2030 that incorporates the rule language in the existing §117.478, relating to operating requirements. Proposed new §117.2030(a) - (c) incorporate the rule language in the existing §117.478(a) - (c), respectively. For proposed new §117.2030(a) and (b), the commission is proposing to revise the language in existing §117.478(a) and (b) that specifies unit or units "subject to the emission limitations of §117.475." Proposed new §117.2030(a) and (b) specify "subject to §117.2010 . . .." While compliance with the emission specifications in existing §117.475(c) is achieved through the Mass Emission Cap and Trade Program for sources that are required to participate in the program, and an individual unit may not necessarily be required to meet the applicable emission specification in §117.475(c), units subject to existing §117.475(c) are still required to comply with existing §117.478. This proposed change for proposed new §117.2030 would clarify the commission's intent and avoid misinterpretation of the rule requirements for units subject to the Mass Emission Cap and Trade Program. In addition, for proposed new §117.2030(b)(1), the commission proposes to omit the phrase "except for wood-fired boilers" because wood-fired boilers are not subject to either the existing rule or the proposed rule. The commission is concurrently proposing a new §117.8140(b) that incorporates the engine testing requirements in the existing §117.478(b)(5). Therefore, the engine testing requirements in existing §117.478(b)(5) have been omitted from the proposed new §117.2030(b)(5) and replaced with a reference to the proposed new §117.8140(b).

Section 117.2035, Monitoring and Testing Requirements

The commission proposes a new §117.2035 that incorporates the rule language regarding monitoring and testing from the existing §117.479, relating to monitoring, recordkeeping, and reporting requirements. Proposed new §117.2035(a) - (f) incorporate the rule language from existing §117.479(a) - (f), respectively. Proposed new §117.2035(g) incorporates the rule language from existing §117.479(i), concerning run time meters. The recordkeeping and reporting requirements in existing §117.479(g), (h), and (j) are proposed to be incorporated in a new proposed §117.2045, as discussed elsewhere in this preamble. In addition, for proposed new §117.2035, the commission is proposing to revise the language in existing §117.479(a) and (e) that specifies "subject to the emission limitations of §117.475." Proposed new §117.2035(a) and (e) would specify "subject to §117.2010 . . .." As previously indicated in this preamble, this proposed change would clarify the commission's intent and avoid misinterpretation of the rule requirements for units subject to the Mass Emission Cap and Trade Program.

For proposed new §117.2035(b) and (c), the references to existing §117.213(e) and (f) are proposed to be updated to §117.8100(a) and (b), as applicable, because the applicable requirements for CEMS and PEMS from existing §117.213 are proposed to be incorporated in a new §117.8100. For proposed new §117.2035(c), concerning NO_x monitors, the commission proposes to add a provision that specifies that if a PEMS is used, the PEMS must predict the pollutant emissions in units of the applicable emission specifications of the division. This change is necessary because this requirement from existing §117.213(f) is not included in the proposed new §117.8100(b).

The commission is concurrently proposing a new §117.8000 that incorporates some of the testing requirements in the existing §117.479(e)(3). Therefore, the commission proposes a new §117.2035(e)(3) that replaces specific requirements from existing §117.479(e)(3)(A) - (F) with a reference to the proposed new §117.8000. Existing §117.479(e)(3)(G), regarding the provision allowing the use of American Society for Testing and Materials (ASTM) D6522-00 for performance testing on natural gas-fired engines, turbines, boilers, and process heaters, is proposed to be incorporated into the new §117.2035(e)(3). Also, the commission is concurrently proposing a new §117.8010 that incorporates the report content requirements in the existing §117.211(g). Therefore, for proposed new §117.2035(e)(3), the reference to §117.211(g) in existing §117.479(e)(3)(G), for report content requirements, is revised to reference the proposed new §117.8010.

As indicated previously in this preamble, the commission is concurrently proposing a new §117.8010 that incorporates the report content requirements in the existing §117.211(g). Therefore, proposed new §117.2035(e)(4) changes the reference to §117.211(g) to the proposed new §117.8010. Also, for proposed new §117.2035(e)(6), the commission proposes to revise the language "Initial compliance with the emission specifications of §117.475" to specify that "Initial compliance with §117.2010 . . .." As indicated previously in this preamble, this proposed change would clarify the commission's intent and avoid misinterpretation of the rule requirements for units subject to the Mass Emission Cap and Trade Program.

Section 117.2045, Recordkeeping and Reporting Requirements

The commission proposes a new §117.2045 that incorporates the rule language regarding recordkeeping and reporting from the existing §117.479, relating to monitoring, recordkeeping, and reporting requirements. Proposed new §117.2045(a) - (c) incorporates the rule language from existing §117.479(g), (h), and (j), respectively. For proposed new §117.2045, the commission

is proposing to revise the language in existing §117.479(g) that specifies "subject to the emission limitations of §117.475 . . .." Proposed new §117.2045(a) specifies "subject to §117.2010 . . .." As previously indicated in this preamble, this proposed change would clarify the commission's intent and avoid misinterpretation of the rule requirements for units subject to the Mass Emission Cap and Trade Program.

DIVISION 2, DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

The commission proposes a new Subchapter D, Division 2, entitled Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, that includes new rule language and requirements associated with minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area.

Section 117.2100, Applicability

Proposed new §117.2100 specifies that the new Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources, applies to stationary reciprocating internal combustion engines, boilers, process heaters, gas turbines, and associated duct burners located in the Dallas-Fort Worth eight-hour ozone nonattainment area at a stationary source of NO_x that is not a major source of NO_x.

Section 117.2103, Exemptions

Proposed new §117.2103 would specify those boilers and process heaters, stationary, reciprocating internal combustion engines, and stationary gas turbines, including duct burners that would be exempt from the requirements of Chapter 117, Subchapter D, Division 2. Proposed new §117.2103(a)(1) exempts boilers and process heaters with a maximum rated capacity of 2.0 MMBtu/hr or less. This exemption level is proposed because units with a maximum rated capacity of 2.0 MMBtu/hr or less are already regulated under existing Subchapter B, Division 1, which is proposed to be incorporated in proposed new Subchapter E, Division 3.

In addition, proposed new §117.2103(a)(2)(A) - (G) would exempt stationary reciprocating internal combustion engines: with a hp rating of 50 hp or less; used for research and testing; used for performance verification and testing; used solely to power other engines and gas-turbines during startups; used exclusively for emergency situations, except for 52 hours of operation for testing and maintenance purposes; used in response to and during any officially declared disaster or state of emergency; or used directly and exclusively by the owner or operator for agricultural operations necessary for growing crops or raising of fowl or animals. The exemption in proposed new §117.2103(a)(2)(E), for engines used exclusively for emergency situations, would not be applicable to any new, modified, reconstructed, or relocated engines placed into service on or after June 1, 2007. Proposed new §117.2103(a)(2)(E) also provides the definitions for modified, reconstruction, or relocated.

Proposed new §117.2103(a)(2)(H), specifies that any stationary diesel engines placed into service before January 1, 2007, in the Dallas-Fort Worth eight-hour ozone nonattainment area is eligible for the exemption in §117.2103(a)(2)(H) provided the engine meets the conditions of clauses (i) and (ii). Proposed new §117.2103(a)(2)(H)(i) and (ii) specify that engines claimed exempt under §117.2103(a)(2)(H) must operate less than 100 hours per year, based on a rolling 12-month average and not have been modified, reconstructed, or relocated on or after January 1, 2007, in the Dallas-Fort Worth eight-hour ozone nonattainment area.

Proposed new §117.2103(a)(2)(I) specifies that any stationary diesel engines placed into service on or after January 1, 2007, in the Dallas-Fort Worth eight-hour ozone nonattainment area is eligible for the exemption in §117.2103(a)(2)(I) provided the engine meets the conditions of clauses (i) and (ii). Proposed new §117.2103(a)(2)(I)(i) and (ii) specify that new, modified, reconstructed, or relocated stationary diesel engines claimed exempt under §117.2103(a)(2)(I) must operate less than 100 hours per year, based on a rolling 12-month average, and must meet the corresponding emissions standards in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation.

Proposed new §117.2103(a)(3) specifies that any stationary gas turbines rated at less than 1.0 megawatt with initial start of operation on or before June 1, 2007, in the Dallas-Fort Worth eight-hour ozone nonattainment area is exempt.

Proposed new §117.2103(b) establishes an exemption for certain low usage boilers and process heaters. Proposed new §117.2103(b)(1) provides an exemption for boilers and process heaters with the maximum rated capacity greater than 2.0 MMBtu/hr and less than 5.0 MMBtu/hr that have an annual heat input less than or equal to 1.8 (10^9) Btu per calendar year or a monthly average heat input less than or equal to 1.5 (10^8) Btu per month for the months of May through October. Proposed new §117.2103(b)(2) provides an exemption for boilers and process heaters with the maximum rated capacity greater than 5.0 MMBtu/hr that have an annual heat input less than or equal to 9.0 (10^9) Btu per calendar year or a monthly average heat input less than or equal to 7.5 (10^8) Btu per month for the months of May through October. The proposed annual fuel usage exemptions are consistent with the fuel usage exemptions applicable to minor sources of NO_x in the Houston-Galveston-Brazoria ozone nonattainment area. The commission is proposing the alternative monthly average-based exemption for the months of May through October to provide an exemption for sources, such as independent school districts, that have significant variation in seasonal usage and very low usage during typical ozone season months. The months of May through October represent the portion of ozone season for the Dallas-Fort Worth eight-hour ozone nonattainment area when the majority of ozone exceedances occur. This proposed exemption would allow sources that exceed the annual fuel usage criteria due to higher usage in winter months to still potentially qualify for exemption if usage during ozone-season months is sufficiently limited. However, the totalizing fuel flow requirements in §117.2135(a) and §117.2145(a)(1) would still apply to these exempted units in order to document that the annual or monthly heat input conditions of the exemption are being met.

Section 117.2110, Emission Specifications for Eight-Hour Attainment Demonstration

Proposed new §117.2110 establishes the proposed emission specifications for units in the Dallas-Fort Worth eight-hour ozone nonattainment area that would be subject to this rulemaking.

Proposed new §117.2110(a) establishes the NO_x emission specifications for each applicable category of units. Proposed new §117.2110(a)(1) establishes the NO_x emission specifications for boilers and process heaters. The proposed emission specification for gas-fired boilers and process heaters is 0.036

lb/MMBtu heat input or, alternatively, 30 ppmv, at 3.0% O_2, dry basis. The proposed emission specification for liquid-fired boilers and process heaters is 0.072 lb/MMBtu heat input or, alternatively, 60 ppmv, at 3.0% O_2, dry basis. The commission has determined that combustion modifications such as the installation of low-NO_x burners is expected to be the primary means of owners and operators to comply with the proposed emission specification for boilers and process heaters.

Proposed new §117.2110(a)(2) establishes NO_x emission specifications for stationary, gas-fired, reciprocating internal combustion engines. Gas-fired engines fired on landfill gas are proposed to be limited to 0.60 g/hp-hr and all other gas-fired engines are proposed to be limited to 0.50 g/hp-hr. NSCR technology is anticipated to be the primary control technology for rich-burn engines to comply with this proposed rule. In some cases, the owner or operator may have to install an additional catalyst module with the NSCR control package in order to comply with the 0.50 g/hp-hr emission specification. One possible control technology available for lean-burn engines is the application of an EGR kit (in order to reduce the excess O_2) combined with NSCR control. While NSCR is not normally applied to lean-burn engines, the use of the exhaust gas recirculation kit reduces exhaust gas O_2 and allows NSCR to be installed. It is possible that owners or operators of some lean-burn engines may not be able to apply the exhaust gas recirculation kit coupled with NSCR. In these instances, SCR may be required to achieve the proposed emission specifications. No landfill gas-fired engines were identified in the inventory in the counties impacted by this proposed rule; however, the 0.60 g/hp-hr for gas-fired engines fired on landfill gas is consistent with the emission specification for this category of engines in the Houston-Galveston-Brazoria ozone nonattainment area and is expected to be achievable through combustion modifications or by purchasing a new engine meeting the emission specification.

Stationary, dual-fuel, reciprocating internal combustion engines would be limited to 5.83 g/hp-hr by proposed new §117.2110(a)(3). For stationary, dual-fuel reciprocating internal combustion engines, combustion modifications are expected to be necessary to meet the 5.83 g/hp-hr emission specification requirements.

Proposed new §117.2110(a)(4) would establish emission specifications for stationary, diesel, reciprocating internal combustion engines based on engine hp rating and the date that the engine was installed, modified, reconstructed, or relocated. These emission specifications are similar to the emission specifications for stationary diesel engines subject to existing Subchapter D, Division 2 in the Houston-Galveston-Brazoria ozone nonattainment area; however, the commission is not proposing to require engines to meet previous specifications for which the dates have passed. Proposed new §117.2110(a)(4)(A) specifies that stationary diesel engines placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated after June 1, 2007, would be limited to the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. Section 117.2110(a)(4)(A) would define modification, reconstruction, and relocated consistent with §117.2010(c)(4). Proposed new §117.2110(a)(4)(B) would establish the NO_x emission limits for stationary diesel engines installed, modified, reconstructed, or relocated on or after June 1, 2007. The proposed emission specifications in §117.2110(a)(4)(B) are consistent with the standards for stationary diesel engines in the Houston-Galveston-Brazoria nonattainment area that have not yet passed by the time of the anticipated adoption date of this rulemaking.

The commission expects that the majority of stationary diesel engines at minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area would qualify for exemption under §117.2103(a)(2)(H) or (I). When owners or operators modify, reconstruct, or relocate existing stationary diesel engines on or after June 1, 2007, if used exclusively in emergency situations, these engines would continue to be exempt from the new emission specifications, but would be required to meet the EPA Tier 1, Tier 2, and Tier 3 emission standards for non-road diesel engines in effect at the time of installation, modification, reconstruction, or relocation. This would ensure that as turnover of older, higher-emitting stationary diesel engines occurs, the replacements would be cleaner engines. For engines that do not qualify for exemption, the commission does not anticipate that engines placed into service prior to June 1, 2007, would require combustion modifications to meet the 11.0 g/hp-hr emission specification. The cost of combustion modifications to stationary diesel engines to meet the emission standards proposed in §117.2110(a)(4)(B) is expected to be near the cost of a new engine; therefore, the commission anticipates that for engines placed into service on or after June 1, 2007, the owner or operator would likely purchase new equipment rather than retrofit or modify existing equipment.

In addition, the proposed new §117.2110(a)(5) establishes a NO_x emission specification of 0.15 lb/MMBtu heat input, approximately 42 ppmv, dry at 15% O_2, for stationary gas turbines and duct burners used in turbine exhaust ducts. For stationary gas turbines (including duct burners), the commission anticipates that combustion modifications such as water or steam injection would be necessary to achieve the proposed emission specification of 0.15 lb/MMBtu.

The proposed new §117.2110(a)(6), provides an alternative emission specification of 0.060 lb/MMBtu in lieu of the emissions specifications in §117.2110(a)(1) - (5) for a unit with an annual capacity factor of 0.0383 or less. The capacity factor as of December 31, 2000, must be used to determine eligibility for this alternative emission specification. For units placed into service after December 31, 2000, a 12-month rolling average must be used to determine the annual capacity factor.

Proposed new §117.2110(b) specifies that the averaging time for determining compliance with the NO_x emission specifications. Proposed new §117.2110(b)(1) specifies the averaging time for units equipped with CEMS or PEMS must be either a rolling 30-day average in the units of the applicable standard, a block one-hour average in the units of the applicable standard, or a block one-hour average in pounds per hour for boilers or process heaters. Proposed new §117.2110(b)(2) specifies that averaging time for units not operated with CEMS or PEMS must be a block one-hour average in the units of the applicable standard.

Proposed new §117.2110(c) specifies that the maximum rated capacity used to determine the applicability of the emissions specifications must be the greater of the maximum rated capacity as of December 31, 2000, or the maximum rated capacity after December 31, 2000. For example, if a boiler rated at 1.8 MMBtu/hr was placed into service prior to December 31, 2000, and then subsequently modified to increase its maximum capacity to 2.5 MMBtu/hr after December 31, 2000, that boiler would no longer qualify for the exemption under §117.2103(a)(1) and would be required to comply with the rule.

Proposed new §117.2110(d) specifies that a unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, would remain classified as a stationary gas-fired engine for the purposes of this proposed rule.

Proposed new §117.2110(e) specifies that changes after December 31, 2000, to a unit subject to an emission specification in subsection (a) that result in increased NO_x emissions from a unit not subject to the emission specifications is only allowed if the conditions of proposed §117.2110(e)(1) and (2) are met. Proposed §117.2110(e)(1) would require the increase in NO_x emissions at the unit not subject to an emission specification be determined using CEMS or PEMS monitoring or through stack testing that meets the requirements of §117.2135. In addition, proposed §117.2110(e)(2) would require that emission credits equal to the increase in NO_x emissions must be obtained and used in accordance with proposed new §117.9800, concerning use of emissions credits for compliance. An example of this is redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare.

Proposed new §117.2110(f) specifies that a source that met the definition of major source on December 31, 2000, must always be classified as a major source for purposes of this proposed rule. In addition, a source that was a minor source on December 31, 2000, but becomes a major source after December 31, 2000, would from that time forward always be classified as a major source for purposes of Chapter 117.

Proposed new §117.2110 also adds a new §117.2110(g) that specifies that the low annual capacity factor available under §117.2110(a)(6) for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. In addition, proposed §117.2110(g) specifies that reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(6).

Proposed new §117.2110(h) establishes ammonia and CO emission specifications. The CO emission specification in proposed §117.2110(h)(1) is 400 ppmv at 3.0 O_2, dry basis, or alternatively, 3.0 g/hp-hr for stationary internal combustion engines. Proposed new §117.2110(h)(1)(A) and (B) specify the averaging time for the CO emission specification. The CO specification is necessary to prevent large increases in CO emissions concurrent with the installation of NO_x controls, and represents good engineering practice. For units that inject urea or ammonia into the exhaust stream to control NO_x emissions, proposed §117.2110(h)(2) includes a 10 ppmv ammonia emission specification (at 3.0% O_2, dry basis, for boilers and process heaters; 15% O_2 for stationary gas turbines, including duct burners used in turbine exhaust ducts, and gas-fired lean-burn engines; and 3.0 O_2 for all other units). Proposed new §117.2110(h)(2)(A) and (B) specify the averaging time for the ammonia emission specification. This ammonia emission specification is necessary to ensure that excessive ammonia slip emissions do not occur should an owner or operator use a control technology such as SCR.

Finally, proposed new §117.2110(i) specifies that an owner or operator may use emission reduction credits as specified in proposed new §117.9800 to comply with the proposed NO_x emission specifications.

Section 117.2125, Alternative Case Specific Specifications

The commission proposes a new §117.2125, concerning alternative case specific specifications, that establishes provisions that allows owners or operators to petition the executive director for alternative case specific emission specifications for CO and ammonia. Proposed §117.2125(a) specifies that the executive director may approve emission specifications different from the CO or ammonia specifications for a unit where a person can demonstrate that the affected unit cannot attain the CO or ammonia specifications of §117.2110(h). Proposed subsection (a)(1) specifies that the executive director shall consider on a case-by-case basis the technological and economic circumstances of the individual unit. Proposed subsection (a)(2) requires that the executive director must determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the NO_x emission specifications of §117.2110. Proposed subsection (a)(3) specifies that the executive director, in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant at which the unit is located to meet emission specifications through system-wide averaging at maximum capacity. Finally, proposed §117.2125(b) specifies that any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision, and that the requirements of §50.139 (relating to Motion to Overturn Executive Director's Decision) apply to §117.2125.

Section 117.2130, Operating Requirements

The commission proposes a new §117.2130 that establishes operating requirements for units subject to the emission specifications of this division. Proposed new §117.2130(a) specifies that the owner or operator must operate any unit subject to the emission specifications in compliance with those specifications. Proposed new §117.2130(b) specifies that all units subject to the emission specifications must be operated so as to minimize NO_x emissions consistent with the emission control techniques selected, over the unit's operating or load range during normal operations.

Proposed new §117.2130(b)(1) requires each boiler to be operated with O_2, CO, or fuel trim. Proposed new §117.2130(b)(2) requires that each boiler and process heater controlled with forced FGR to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range. Proposed new §117.2130(b)(3) requires that each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity. Proposed new §117.2130(b)(4) requires each stationary internal combustion engine controlled with NSCR to be equipped with an AFR controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits. Proposed new §117.2130(b)(5) requires that each stationary internal combustion engine must be checked for proper operation according to §117.8140(b). Proposed new §117.2130(c) specifies that no person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except as provided in subsection (c)(1) - (3). Proposed new subsection (c)(1) allows for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours. Proposed subsection (c)(2) allows for operation to verify reliability of emergency equipment (e.g.,

emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair. Proposed new subsection (c)(3) allows for operation for firewater pumps for emergency response training conducted during April through October. This provision is identical to a requirement implemented for the Houston-Galveston-Brazoria ozone nonattainment area. The requirement, if adopted, would delay emissions of NO_x from testing of these engines until after noon in order to help limit ozone formation.

Section 117.2135, Monitoring, Notification, and Testing Requirements

The commission proposes a new §117.2135 that specifies the monitoring, notification, and testing requirements that apply to minor sources in the Dallas-Fort Worth eight-hour ozone nonattainment area subject to this proposed rule. Proposed new §117.2135(a) establishes totalizing fuel flow meter requirements. Proposed new §117.2135(a)(1) specifies the accuracy of totalizing fuel flow meters to an accuracy of ±5%. This subsection also allows the amount of fuel burned in pilot flames to be calculated using good engineering methods instead of requiring a separate fuel flow meter. The calculated result would be added to the metered value for total fuel use. Proposed new §117.2135(a)(2) specifies alternatives to the fuel flow monitoring requirements of this subsection. Proposed new §117.2135(a)(2)(A) provides an alternative to the total fuel flow meter requirements for independent school districts. Proposed new §117.2135(a)(2)(A)(i) specifies that owners or operators that elect to follow this alternative provision must maintain monthly records of fuel usage for the entire site and monthly records for each unit of the hours of operation, average operating rate, and estimated fuel usage. Proposed new §117.2135(a)(2)(A)(ii) specifies that within 60 days of written request by the executive director, the owner or operator must submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit. Proposed new §117.2135(a)(2)(B) allows the owner or operator to share a single totalizing fuel flow meter on multiple units provided certain conditions are met. Proposed new §117.2135(a)(2)(B)(i) requires that all affected units at the site qualify for exemption under proposed new §117.2103(b). Proposed new §117.2135(a)(2)(B)(ii)(I) and (II) require that the total fuel usage for the site is less than the annual or monthly fuel usage limitation in §117.2103(b)(1), or the annual or monthly fuel usage limitation in §117.2103(b)(2) when all affected units at the site are equal to or greater than 5.0 MMBtu/hr.

Proposed new §117.2135(b) specifies that if an owner or operator installs an O_2 monitor, then the criteria in §117.8100(a) is the appropriate guidance for the location and calibration of the monitor. Proposed new §117.2135(c) specifies that if an owner or operator installs a NO_x monitor, then it must meet the CEMS or PEMS requirements of §117.8100(a) or (b). Proposed new §117.2135(d) specifies that monitors must be installed on the schedule specified in §117.9210.

Proposed new §117.2135(e) lists the testing requirements for units subject to the emission specifications of §117.2110. Proposed §117.2135(e)(1) requires that each unit must be tested for NO_x, CO, and O_2 emissions and proposed subsection (e)(2) requires that each unit that injects urea or ammonia for NO_x control be tested for ammonia emissions. Proposed new §117.2135(e)(3) specifies all testing must be conducted according to §117.8000 for units not equipped with CEMS or PEMS. In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use ASTM D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. Also, if the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010. Proposed new §117.2135(e)(4) specifies that the results must be reported in the units of the applicable standard and averaging periods, and that if compliance testing is based on 40 CFR 60 Appendix A test methods then the report must contain the information specified in §117.8010.

Proposed new §117.2135(e)(5) specifies that for units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device. Proposed new §117.2135(e)(6) specifies that on units operating with CEMS or PEMS, initial compliance with the emission specifications of §117.2110 of this title must be demonstrated using the CEMS or PEMS after monitor certification. Proposed new §117.2135(e)(7) specifies retesting requirements for units not operating with CEMS or PEMS. Proposed new §117.2135(e)(7)(A) requires retesting within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate. Proposed new §117.2135(e)(7)(B) allows retesting at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), FGR, and fuel-lean and conventional (fuel-rich) reburn. Proposed new §117.2135(e)(8) specifies that testing be performed in accordance with the schedule specified in §117.9210. Proposed new §117.2135(e)(9) requires that all test reports be submitted to the executive director for review and approval within 60 days after completion of the testing. Notification requirements are specified in proposed new §117.2135(e)(10). Written notification is required at least 15 days in advance of any testing or RATA required under §117.2135. Finally, proposed new §117.2135(f) specifies the owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(a)(2)(E), (H), or (I) of this title shall record the operating time with a non-resettable elapsed run time meter.

Section 117.2145, Recordkeeping and Reporting Requirements

The commission proposes a new §117.2145 to specify recordkeeping and reporting requirements for sources subject to the proposed rule. Proposed new §117.2145(a) requires that the owner or operator of a unit subject to the emission specifications of §117.2110 must maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. Proposed new §117.3345(a)(1) specifies that, for units claimed exempt under proposed new §117.2103(b), records must be maintained of annual or monthly fuel usage, as applicable. Proposed new §117.3345(a)(2) requires that records of hourly emissions be maintained for each unit using a CEMS or PEMS. Proposed new §117.3345(a)(2)(A) requires hourly emissions for units complying with an emission specifi-

cation enforced on a block one-hour average. Proposed new §117.3345(a)(2)(B) requires daily emissions for units complying with an emission specification enforced on a rolling 30-day average. Proposed new §117.3345(a)(2)(B)(i) and (ii) specify that emissions must be recorded in units of lb/MMBtu heat input and pounds or tons per day. Proposed new §117.2145(a)(3) specifies records for each stationary internal combustion engine subject to the emission specifications of §117.2110. Records required under proposed new §117.2145(a)(3) include emissions measurements required by §117.2130(b)(5) as well as any catalytic converter, AFR controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken. Proposed new subsection (a)(4) requires records of the CO measurements specified in subsection §117.2130(b)(5). Proposed new subsection (a)(5) requires records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems. Proposed new subsection (a)(6) requires the owner or operator to maintain records of the results of performance testing.

Proposed new §117.2145(b) specifies that written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(a)(2)(E), (H), or (I) of this title or §117.2130(b)(5). In addition, for each engine claimed exempt under §117.2103(a)(2)(E), written records must be maintained that reflect the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and dates of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction. Proposed new §117.2145(c) specifies the requirements for records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. Proposed new §117.2145(c)(1) specifies the owner or operator of each stationary diesel or dual-fuel engine shall maintain records of dates of operation. Proposed new subsection (c)(2) requires records of start and end times of operation. Proposed new subsection (c)(3) requires records with engine identification and proposed new subsection (c)(4) requires records of the total hours of operation for each month and for the most recent 12 consecutive months.

SUBCHAPTER E, MULTI-REGION COMBUSTION CONTROL

The commission proposes a new Chapter 117, Subchapter E, entitled Multi-Region Combustion Control, that incorporates the portions of the existing Chapter 117 that are applicable to multiple regions of the state. Proposed new Subchapter E incorporates rules from existing Subchapter B, Divisions 2 and 4, and existing Subchapter D, Division 1. In addition, the commission proposes a new Subchapter E, Division 4, entitled East Texas Combustion, that proposes new rule language and requirements associated with stationary, gas-fired, reciprocating internal combustion engines in certain counties in the northeast Texas area. The new Subchapter E, Division 4 is proposed as a part of the commission's eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area.

DIVISION 1, UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL TEXAS

The commission proposes a new Chapter 117, Subchapter E, Division 1 to incorporate the rule language from existing Chapter 117, Subchapter B, Division 2, regarding utility electric generation in East and Central Texas.

Section 117.3000, Applicability

The commission proposes a new §117.3000 that incorporates the applicability language from existing §117.131.

Section 117.3003, Exemptions

The commission proposes a new §117.3003 that incorporates the exemption language from existing §117.133.

Section 117.3005, Gas-Fired Steam Generation

The commission proposes a new §117.3005 that incorporates the requirements and specifications from existing §117.134.

Section 117.3010, Emission Specifications

The commission proposes a new §117.3010 that incorporates the requirements and emission specifications from existing §117.135. The commission also proposes to correct a typographical error in existing §117.135(1) that incorrectly specified "nitrogen oxide (NO_x) . . .." The correct terminology is for the regulated pollutant is "nitrogen oxides (NO_x)." Because all other sections in the division correctly specify "nitrogen oxides," the commission does not anticipate that any regulated entities have misinterpreted the commission's intent with regard to the emission specifications in §117.135. Therefore, the commission does not consider the correction in proposed new §117.3010(1) to have any impact to the regulated community.

In addition, the commission proposes to revise the ammonia emission specification in proposed new §117.3010(2), incorporated from existing §117.135(2), to be the numeral "10" instead of the word "ten." Consistent with EPA guidance, the commission normally enforces emission test and monitoring results to the same significant figures as the emission specifications. Using the numeral "10" for the ammonia emission specification would ensure consistent enforcement of the emission specification. Finally, the commission proposes to move the existing requirement for ammonia monitoring procedures in existing §117.135(2)(B), that references the ammonia monitoring procedures in existing §117.114(a)(4) to the appropriate monitoring section in proposed new §117.3040, concerning continuous demonstration of compliance.

Section 117.3020, System Cap

The commission proposes a new §117.3020 that incorporates the language from existing §117.138, concerning System Cap requirements, and §117.139, concerning System Cap Flexibility. Existing §117.138(a) - (k) are proposed to be incorporated in proposed new §117.3020(a) - (k). Existing §117.139 is proposed to be incorporated in proposed new §117.3020(l). In addition, the commission proposes a revised equation in §117.3020(c) that incorporates the equation in existing §117.138(c) and presents the equation in a format consistent with other equations in Chapter 117.

Section 117.3025, Alternative Case Specific Specifications

The commission proposes a new §117.3025 that incorporates the provisions in the existing §117.151, relating to alternative case specific specifications. Proposed new §117.3025(a) and

(b) incorporates the rule language in the existing §117.151(a) and (b); however, the proposed new §117.3025(a) omits the existing §117.151(a)(4) because the Engineering Services Team no longer exists within the TCEQ.

Section 117.3035, Initial Demonstration of Compliance

The commission proposes a new §117.3035 that incorporates the requirements for initial demonstration of compliance from existing §117.141. Proposed new §117.3035(a) - (d) incorporate the rule language from existing §117.141(a) - (d). Additionally, in proposed new §117.3035(a), the commission proposes to revise the language from existing §117.141(a) to clarify that the units subject to the emission specifications should be tested, and not the owner or operator of the units.

Section 117.3040, Continuous Demonstration of Compliance

The commission proposes a new §117.3040 that incorporates the requirements for continuous demonstration of compliance from existing §117.143. Proposed new §117.3040(a) incorporates the rule language from existing §117.143(a). The CO monitoring provisions in existing §117.143(b) are incorporated in proposed new §117.3040(b); however, the actual monitoring methods in existing §117.143(b)(1) and (2) are proposed to be incorporated in proposed new §117.8120. Therefore, proposed new §117.3040(b) specifies that if the owner or operator chooses to monitor CO exhaust emissions, the methods specified in §117.8120 should be considered appropriate guidance for determining CO emissions.

Proposed new §117.3040(c) incorporates the ammonia monitoring provisions from existing §117.135(2)(B) because the continuous demonstration of compliance section is the most appropriate section for the ammonia monitor requirements. The ammonia monitoring procedures in existing §117.114(a)(4), referenced by existing §117.135(2)(B), are proposed to be incorporated in a new §117.8130. Proposed new §117.3040(c) specifies that, for units that inject urea or ammonia into the exhaust stream for NO_x control, one of the ammonia monitoring procedures in proposed new §117.8130 must be used to demonstrate compliance with the ammonia emission specification.

Proposed new §117.3040(d) incorporates the CEMS requirements from existing §117.135(c). The requirements for CEMS in existing §117.135(c) are sufficiently different from the requirements in §117.113(e) that referencing the general CEMS requirements for utility electric generation sources in proposed new §117.8110(a) would result in substantive changes to the requirements for affected CEMS. Therefore, the commission is not proposing to merge the CEMS requirements in existing §117.135(c) with proposed new §117.8110(a).

Proposed new §117.3040(e) incorporates the rule language from existing §117.135(d), concerning monitoring for acid rain peaking units. The commission proposes a new §117.3040(f) that incorporates the rule language from existing §117.135(e), concerning PEMS requirements. Proposed new §117.3040(f)(1) incorporates the provision in existing §117.135(f)(1), that specifies that the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of the division. The commission proposes a new §117.3040(f)(2) that references the proposed new §117.8110(b) as a replacement for the rule language in existing §117.135(f)(2) - (4). The general requirements for PEMS in proposed new §117.8110(b) are identical to the requirements in existing §117.135(f)(2) - (4).

Finally, the commission proposes new §117.3040(g) - (l) that incorporate the rule language from existing §117.135(f) - (k), respectively.

Section 117.3045, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.3045, concerning notification, recordkeeping, and reporting requirements, that incorporates the rule language from existing §117.149. Proposed new §117.3045(a) - (e) incorporate the rule language from existing §117.149(a) - (e). In addition, for proposed new §117.3045(a), the commission proposes to replace the language "the startup and/or shutdown exemptions allowed under §101.222" with "the startup and/or shutdown provisions of §101.222 . . .." The reference to exemptions is not applicable to §101.222 and the proposed change is necessary to clarify proposed new §117.3045(a). The commission is soliciting comments on this specific change to the language in existing §117.149(a). The commission is also soliciting comments on whether the reference to §101.222 should be removed.

Section 117.3054, Final Control Plan Procedures

The commission proposes a new §117.3054, concerning final control plan procedures, that incorporates the rule language from existing §117.145.

Section 117.3056, Revision of Final Control Plan

The commission proposes a new §117.3056, concerning revision of final control plan, that incorporates the rule language from existing §117.147.

DIVISION 2, CEMENT KILNS

The commission proposes a new Chapter 117, Subchapter E, Division 2 to incorporate the rule language from existing Chapter 117, Subchapter B, Division 4, regarding cement kilns. In addition, the commission proposes new control, monitoring, testing, and recordkeeping requirements for cement kilns in Ellis County as a part of the commission's Dallas-Fort Worth eight-hour ozone attainment demonstration.

Section 117.3100, Applicability

The commission is proposing new §117.3100 that incorporates the applicability rule language from existing §117.261. In addition, the language in existing §117.261, regarding applicability of the rule to units placed into service before December 31 1999, is proposed to be moved to the proposed new §117.3103, Exemptions.

Section 117.3101, Cement Kiln Definitions

The commission is proposing new §117.3101 that incorporates the definition rule language from existing §117.260.

Section 117.3103, Exemptions

The commission is proposing new §117.3103, concerning exemptions, that incorporates the exemption in applicability language of existing §117.261 that exempted certain units placed into service on or after December 31, 1999, and proposes a new exemption regarding units subject to proposed new §117.3123. The proposed new §117.3103(a) specifies that units exempted from the division include any portland cement kiln placed into service on or after December 31, 1999, except as specified in proposed new §§117.3110, 117.3120, and 117.3123. Proposed new §117.3110 and §117.3120 are corresponding new sections that incorporate existing rule language from existing §117.265

and §117.283, respectively, which are already referenced in the existing language in §117.261. The reference to proposed new §117.3123 is necessary to ensure that cement kilns located at existing accounts in Ellis County, regardless of date placed into service, are subject to the proposed emission control requirements for the Dallas-Fort Worth eight-hour attainment demonstration described in §117.3123 and other associated requirements discussed later in this preamble.

Proposed new §117.3103(b) specifies that any account in Ellis County that had no portland cement kilns in operation prior to January 1, 2001, is exempt from proposed new §117.3123. All existing accounts are proposed to be regulated under the source cap control measure in proposed new §117.3123, including any new kilns placed into service at those accounts. Any newly permitted accounts would be addressed under New Source Review permitting. Proposed new §117.3103(c) specifies that §117.3110 and §117.3120 would no longer apply to cement kilns subject to §117.3123 after the compliance date specified in proposed new §117.9320(c). This provision is necessary to avoid overlapping requirements for sources that are subject to the mandatory source cap requirement in proposed new §117.3123.

Section 117.3110, Emission Specifications

The commission is proposing a new §117.3110 that incorporates the rule language regarding emission specifications from existing §117.265. Proposed new §117.3110(a) - (e) incorporate the rule language from existing §117.265(a) - (e).

Section 117.3120, Source Cap

The commission is proposing new §117.3120 that incorporates the rule language from existing §117.283. Proposed new §117.3120(a) - (f) incorporate the rule language from existing §117.283(a) - (f), respectively. In addition, the commission proposes a new equation in §117.3120(a) that incorporates the equation in existing §117.283(a). The proposed new equation in §117.3120(a) presents the equation in a format consistent with other equations in Chapter 117 and provides a definition for each term used in the equation.

Section 117.3123, Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements

The commission is proposing a new §117.3123, entitled Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements, that includes a new mandatory source cap requirement for all units located in Ellis County. Proposed new §117.3123(a) specifies that the owner or operator of any portland cement kiln in Ellis County shall not allow the total NO_x emissions from all cement kilns located at the account to exceed the source cap limitation in proposed new §117.3123(b). Proposed new §117.3123(a) also specifies that compliance with the source cap must be in accordance with the compliance schedule in proposed new §117.9320(c).

Proposed new §117.3123(b) specifies that the NO_x source cap for an account subject to proposed new §117.3123 must be calculated according to the equation in proposed new §117.3123(b). The source cap for an account is determined according to the equation in proposed new §117.3123(b), the number and type of cement kilns located at the account, and specified NO_x emission factors for each type of kiln. The source cap, identified as resultant Cap_{8hour} in the equation, is the total allowable NO_x emissions from all cement kilns located at an account in tons per day and on a 30-day rolling average basis. The NO_x emission factor to determine the cap contribution from each dry preheater-precalciner or precalciner kiln, variable K_D, is 2.84 tons per day. The NO_x emission factor to determine the cap contribution from each long wet kiln, variable K_W, is 1.39 tons per day. Variables N_D and N_W are the total number of dry preheater-precalciner or precalciner kilns and long wet kilns located at the account and operational during calendar year 2000. The total source cap for an account subject to proposed new §117.3123 would be the product of variables K_D and N_D, plus the product of variables K_W and N_W. Cement kilns that began operation after calendar year 2000 would be excluded from the calculation of the source cap; however, as described later in this preamble, NO_x emissions from cement kilns that began operation after calendar year 2000 would be included in the total emissions accounted for when determining compliance with the source cap. This approach is consistent with source cap option currently allowed under existing §117.283. The emission factors used for the source cap calculation, K_D and K_W, were determined based on the future 2009 projected emission rates from the commission's modeling sensitivities study using 35 - 50% controls. Variable K_D, 2.84 tons per day, is the average of the 2009 projected controlled NO_x emissions of all dry preheater-precalciner or precalciner kilns from the modeling sensitivity study. Variable K_W, 1.39 tons per day, is the average of the 2009 projected controlled NO_x emissions of five of the seven long wet kilns from the modeling sensitivity study.

Proposed new §117.3123(c) specifies the NO_x emission monitoring requirements of proposed new §117.3142 must be used to demonstrate continuous compliance with the source cap. Proposed new §117.3123(d) specifies the requirements that apply to kilns that were not operational prior to calendar year 2001. Proposed new §117.3123(d)(1) specifies that a cement kiln not in operation prior to calendar year 2001 is subject to the source cap but must not be included in the source cap calculation in proposed new §117.3123(b). Proposed new subsection (d)(2) specifies that the requirements of proposed new §117.3142 and §117.3145 apply, and proposed new subsection (d)(3) specifies that the NO_x emissions from the kiln must be included in the calculation of the rolling 30-day average for compliance with the source cap. The intent of the source cap in proposed new §117.3123 is to establish a maximum cap on the total NO_x emissions from cement kilns at each account, based on the number of kilns in operation in calendar year 2000. The provisions of proposed new §117.3123(d) prohibit expanding the source cap based on new units installed after calendar year 2000.

The commission proposes a new §117.3123(e) that requires the owner or operator to submit a control plan for compliance with the source cap. Control plans are required to be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office. Proposed new §117.3123(e)(1) specifies the minimum content of the control plan, including: the emission point number for each kiln at the account; the facility identification number for each kiln at the account; the source cap for the account calculated according to the equation in proposed new §117.3123(b); and a description of the control measures that have been or will be implemented for each cement kiln for compliance with the source cap. Proposed new §117.3123(e)(2) provides for revisions to the control plan and specifies that the revised control plan must be submitted with any required permit application. The revised control plan must adhere to the requirements of the rule.

Proposed new §117.3123(f) specifies an ammonia emission specification of 10 ppmv at 7% O_2 for units that inject ammonia or urea to control NO_x emissions. Because SNCR and SCR are

among the potential control technologies available for compliance with the source cap, an ammonia emission specification is necessary to prevent excessive ammonia slip.

Finally, proposed new §117.3123(g) provides compliance flexibility by allowing owners or operators to comply with the proposed source cap limitation, in whole or in part, using emission reduction credits as provided in proposed new §117.9800.

Section 117.3125, Alternative Case Specific Specifications

The commission is proposing new §117.3125 that sets forth provisions for alternative case emission specifications for ammonia. Proposed §117.3125(a) specifies that the executive director may approve emission specifications different from the ammonia specification for a unit where a person can demonstrate that the affected unit cannot attain the ammonia specification of §117.3123(f). Proposed subsection (a)(1) specifies that the executive director shall consider, on a case-by-case basis, the technological and economic circumstances of the individual unit. Proposed subsection (a)(2) requires that the executive director must determine that such specifications are the result of the lowest emission specification the unit is capable of meeting after the application of controls to meet the NO_x emission specifications of §117.3123. Proposed subsection (a)(3) specifies that the executive director, in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant at which the unit is located to meet emission specifications through system-wide averaging at maximum capacity. Finally, proposed §117.3125(b) specifies that any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision, and that the requirements of §50.139 apply to §117.3125.

Section 117.3140, Continuous Demonstration of Compliance

The commission proposes a new §117.3140 that incorporates the rule language from existing §117.243, concerning continuous demonstration of compliance. Proposed new §117.3140(a) - (c) incorporate the rule language from existing §117.273(a) - (c), respectively. In addition, for proposed new §117.3140(c)(2), the cross-reference to existing §117.213(f)(2) - (7) is proposed to be changed to new §117.8100(b) because the applicable requirements for PEMS in existing §117.213(f)(2) - (7) are proposed to be incorporated in proposed new §117.8100(b).

Section 117.3142, Emission Testing and Monitoring for Eight-Hour Attainment Demonstration

The commission is proposing a new §117.3142 that specifies emission testing and monitoring requirements for units subject to the source cap in proposed new §117.3123. Proposed new §117.3142(a) specifies that the owner or operator of any portland cement kiln subject to proposed new §117.3123 must comply with the monitoring requirements in proposed new §117.3142(a)(1) - (4). Proposed new §117.3142(a)(1) specifies that the NO_x monitoring requirements of §117.3140 apply. The affected facilities are already required to monitor NO_x emissions under either existing §117.473, which is proposed to be incorporated in the new §117.3140, or due to TCEQ air permit requirements. In addition, proposed new §117.3142(a)(1)(A) - (C) specify additional requirements for NO_x CEMS. Proposed new subparagraph (A) requires that each individual stack must be analyzed for NO_x separately for single units with multiple exhaust stacks. Proposed new subparagraph (B) allows sharing of CEMS among units or among multiple exhaust stacks on a single unit provided the conditions of subparagraph (B)(i) and (ii) are met. Proposed new §117.3142(a)(1)(B)(i) requires that exhaust of each stack is analyzed and reported separately, and proposed new §117.3142(a)(1)(B)(ii) requires that the CEMS meet the certification requirements in §117.3140(b) for each exhaust stream while the CEMS is operating in time-shared mode. Proposed new §117.3142(a)(1)(C) requires that all bypass stacks be monitored to quantify emissions directed through the bypass stack. If the CEMS is located upstream of the bypass stack to satisfy this requirement, the proposed new clauses (i) and (ii) specify additional requirements for monitoring of bypass stacks. Proposed new clause (i) specifies that no stream from other potential sources of NO_x may be introduced between the CEMS and the bypass stack. Proposed new clause (ii) requires the owner or operator to install, operate, and maintain a continuous monitoring system to record automatically the date, time, and duration of each event when the bypass stack is open. These additional requirements for CEMS are necessary to ensure that NO_x emissions are accurately quantified for compliance with the source cap in proposed new §117.3123.

The commission also proposes a new §117.3142(a)(2) to require monitoring of stack exhaust flow rate using the monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6, or 40 CFR Part 75, Appendix A. This new flow monitoring requirement is necessary to ensure that total NO_x emissions are accurately quantified for compliance with the new source cap in proposed new §117.3123. The affected facilities in Ellis County are already required to perform similar flow monitoring due to the TCEQ air permit requirements. Therefore, this proposed new flow monitoring requirement should not require the installation of any new monitoring equipment. In addition, the certification requirements proposed in new §117.3142(a)(2) are similar to the flow monitor certification requirements already required for the monitoring systems by permit.

For units that inject ammonia or urea to control NO_x emissions, proposed new §117.3142(a)(3) requires that ammonia emissions must be monitored according to either proposed new §117.8130(1), (2), or (4). These ammonia monitoring procedures include the mass balance approach, the oxidation of ammonia to nitric oxide approach, or other methods approved by the executive director. The method of stain tubes method in §117.8130(3) is not appropriate for cement kilns in determining compliance with the ammonia emission specification in §117.3123(f) due to the infrequency of sample collection using this method and the potential high variability of ammonia emissions from kilns using urea or ammonia injection for NO_x control. The commission proposes a new §117.3142(a)(4) specifying that the installation of monitors must be performed in accordance with the schedule specified in §117.9320(c).

The commission also proposes a new §117.3142(b) that specifies the calculations and equations used to demonstrate compliance with the source cap. Proposed new §117.3142(b)(1) specifies the equation used to calculate hourly NO_x emissions from each kiln, in pounds per hour, identified as resultant "EH" in the equation. Variable "C" is the block hour average NO_x concentration in ppmv, dry basis, corrected to 7% O_2. Variable "F" is the block hour average exhaust flow rate in dry standard cubic feet per minute, corrected to 7% O_2, and variable "K" is a conversion factor from 40 CFR 60, Appendix A, Method 19 for calculating NO_x mass emission rates from ppmv concentrations. Proposed new §117.3142(b)(2) specifies the equation for calculating the total daily NO_x emissions, expressed as resultant "ED" in the equations, in tons per day from the hourly emissions determined according to proposed new subsection (b)(1) and the number of

hours of operation per day for each kiln, expressed as variable "N" in the equation. Proposed new §117.3142(b)(3) specifies the equation for determining the rolling 30-day average NO_x emissions, expressed as resultant "E_{30day}" in the equation, in tons per day for the account, computed for the preceding 30 days. The rolling 30-day average is calculated based on the total daily NO_x emissions from each kiln determined according to proposed new subsection (b)(2), the number of kilns located at the account, expressed as variable "K," and the preceding 30 days, expressed as variable "N" in the equation.

Section §117.3145, Notification, Recordkeeping, and Reporting Requirements

The commission is proposing a new §117.3145 that incorporates the rule language from existing §117.279, concerning notification, recordkeeping, and reporting requirements. Proposed new §117.3145(a) - (c) incorporates the notification, recordkeeping, and reporting rule language from existing §117.279(a) - (c). In addition, modifications to the existing rule language and additional requirements are proposed for the sources subject to the proposed new source cap in §117.3123. For proposed new §117.3145(a), concerning notification, the commission proposes to add a reference to proposed new §117.3142 to the existing language from §117.279. This change is necessary to require notification of any CEMS or PEMS performance evaluation for monitoring systems required under §117.3142. Similarly, the commission proposes to add a reference to proposed new §117.3142 in proposed new §117.3145(b) to require reporting of test results for any CEMS or PEMS relative accuracy test audit. Proposed new §117.3145(c)(1) is revised to specify that for each kiln subject to §117.3110 or §117.3120, the records in subparagraphs (A) - (C) are required. This change is necessary to clarify that sources subject to the source cap in §117.3123 are not required to maintain the records under §117.3145(c)(1)(A) - (C). In addition, for proposed new §117.3145(c)(1)(B), the commission is proposing to revise the language from existing §117.279(c)(1)(B) to specify that records of the production of clinker should be in United States short tons. Metric tons are typically used by the cement manufacturing industry to express production and this change is necessary to clarify the appropriate units for the records and for the emissions calculated in pounds per ton of clinker.

Proposed new §117.3145(c)(4) specifies new recordkeeping requirements for each kiln subject to the source cap in proposed new §117.3123 and the monitoring requirements of proposed new §117.3142. Proposed new §117.3145(c)(4)(A) requires records of the control plan required by proposed new §117.3123. Proposed new §117.3145(c)(B) and (C) require hourly records of the average NO_x concentration in ppmv, dry basis, at 7% O_2, and hourly records of the NO_x emission in pounds per hour. Proposed new §117.3145(c)(4)(D) and (E) require daily records of the NO_x emissions from each kiln in tons per day, and daily records of the NO_x emissions in tons per day expressed as rolling 30-day average. Proposed new §117.3145(c)(4)(F) requires hourly records of the average exhaust gas flow rate in dry standard cubic feet per minute, corrected to 7% O_2, and proposed new §117.3145(c)(4)(G) requires records of the ammonia monitoring required under proposed new §117.3142(a)(3).

DIVISION 3, WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

The commission proposes a new Chapter 117, Subchapter E, Division 3 to incorporate the rule language from existing Chapter 117, Subchapter D, Division 1, regarding water heaters, small boilers, and process heaters.

Section §117.3200, Applicability

The commission proposes a new §117.3200 that incorporates the applicability rule language from existing §117.461.

Section 117.3201, Definitions

The commission proposes a new §117.3201, concerning definitions, that incorporates the rule language from existing §117.460. In addition, the commission proposes to delete the definitions of direct-vent unit and power-vent unit. These definitions were added in the previous rulemaking because direct-vent and power-vent units were not required to meet the 10 ng/J NO_x emission standard. Because proposed new §117.3205, concerning emission specifications, specifies the same standard for all Type 0 water heaters manufactured on or after July 1, 2002, the separate emission specifications and definitions for direct-vent and power-vent units are superfluous. Subsequent definitions are renumbered accordingly.

Section 117.3203, Exemptions

The commission proposes a new §117.3203 that incorporates the rule language regarding exemptions from existing §117.463. In addition, for proposed new §117.3203(3), the commission proposes to change the exemption in existing §117.463(3), concerning Type 0 units used exclusively to heat swimming pools and hot tubs. Proposed new §117.3203(3) adds language to allow Type 1 and 2 units at single-family residences to qualify for this exemption. It was the commission's intent that the exemption in existing §117.463(3) apply to water heaters used exclusively to heat swimming pools and hot tubs at single-family residences. It was anticipated that only Type 0 units would be used for this purpose. It has come to the commission's attention that some single-family residences have installed Type 1 or 2 units to heat swimming pools and hot tubs. Therefore, the commission is proposing this change to clarify the intent of the exemption. Type 1 and 2 units installed after the appropriate compliance dates at multi-family residences or commercial properties are still required to comply with emission limits set forth in proposed new §117.3205.

Section 117.3205, Emission Specifications

The commission proposes a new §117.3205, concerning emission specifications, that incorporates the rule language from existing §117.465. Also, the commission proposes changes to existing §117.465(b) to implement the requirements of HB 965. For proposed new §117.3205(b)(1), the language "but no later than December 31, 2006," in existing §117.465(b)(1) is proposed to be removed to clarify that Type 0 units manufactured after July 1, 2002, must comply with the requirements in subsection (b)(1)(A) and (B) of this section. As previously discussed in this preamble, the existing NO_x emission specifications, 10 ng/J of heat output or 15 ppmv at 3.0% O_2, in existing §117.465(b)(2)(A) for Type 0 units (except power-vent and direct-vent units) are proposed to be repealed. Therefore, proposed new §117.3205(b) excludes these emission specifications for Type 0 units.

In addition, the emission specifications for power-vent and direct-vent units in existing §117.465(b)(2)(B) are identical to the emission specifications in existing §117.465(b)(1) and proposed new §117.3205(b)(1). Therefore, proposed new §117.3205(b) excludes the emission specifications for power-vent and direct-vent units from existing §117.465(b)(3). All Type 0 gas-fired water heaters, including power-vent and direct vent units, manufactured on or after July 1, 2002, would be subject to the NO_x

emissions specifications in proposed new §117.3205(b)(1). Finally, proposed new §117.3205(b)(2) and (3) incorporate the rule language from existing §117.465(b)(4) and (5), respectively, concerning the emission specifications for Type 1 and 2 units.

Section 117.3210, Certification Requirements

The commission proposes a new §117.3210 that incorporates the rule language from existing §117.467, concerning certification requirements. Proposed new §117.3210(a) and (b) incorporate the requirements from existing §117.467(a) and (b), respectively. In addition, for proposed new §117.3210(a), the commission proposes to remove the date reference for Test Method 7. This proposed change would allow the most recent versions of EPA Test Methods 7 through 7E to be used for the certification testing.

Section 117.3215, Notification and Labeling Requirements

The commission proposes a new §117.3215 that incorporates the rule language from existing §117.469, concerning notification and label requirements.

DIVISION 4, EAST TEXAS COMBUSTION

The commission proposes a new Chapter 117, Subchapter E, Division 4, regarding new requirements for stationary, gas-fired reciprocating internal combustion engines in specified counties in the northeast Texas area. The new Subchapter E, Division 4 is proposed as a part of the commission's eight-hour ozone attainment demonstration for the Dallas-Fort Worth eight-hour ozone nonattainment area. Any engines located in the Dallas-Fort Worth eight-hour ozone nonattainment area would not be subject to this proposed rule. Engines located in the Dallas-Fort Worth eight-hour ozone nonattainment area that would otherwise be subject to this proposed rule, are either currently regulated by equivalent or more stringent requirements under other divisions of Chapter 117, or are proposed to be regulated in separate rulemakings concurrent with this proposed rule. Therefore, applying this rule to the Dallas-Fort Worth eight-hour ozone nonattainment counties would be superfluous.

Section 117.3300, Applicability

The proposed new §117.3300 specifies that the new division would apply to stationary, gas-fired reciprocating internal combustion engines in certain counties in the northeast Texas area. The specific counties included in the applicability for this rulemaking include the following counties: Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Franklin, Freestone, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood Counties.

Section 117.3303, Exemptions

The proposed new §117.3303 would specify those stationary, reciprocating internal combustion engines that would be exempt from the requirements of Chapter 117, Subchapter E, Division 4. Engines with a hp rating less than 50 hp, diesel engines, and dual-fuel engines would be exempt from the proposed rule. Proposed §117.3303 would also exempt engines used: for research and testing; for performance verification and testing; solely to power other engines and gas-turbines during startups; exclusively for emergency situations, except for 52 hours of operation for testing and maintenance purposes; in response to and during any officially declared disaster or state of emergency; or directly and exclusively by the owner or operator for agricultural operations necessary for growing crops or raising of fowl or animals.

Section 117.3310, Emission Specifications for Eight-Hour Attainment Demonstration

The emission specifications for attainment demonstration, and additional requirements related to the emission specifications, are included in proposed new §117.3310. Proposed §117.3310(a) specifies the NO_x emission specifications for stationary gas-fired reciprocating internal combustion engines. Proposed new §117.3310(a)(1) establishes a 1.00 g/hp-hr NO_x emission specification for gas-fired rich-burn engines with a maximum rated capacity less than 500 hp. The NO_x emission specifications for gas-fired rich-burn engines with a maximum rated capacity equal to or greater than 500 hp are proposed in new §117.3310(a)(2) and include 0.60 g/hp-hr for engines fired on landfill gas and 0.50 g/hp-hr on all other gas-fired rich-burn engines. Emission specifications for gas-fired lean-burn engines are included in proposed new §117.3310(a)(3). Proposed new subsection (a)(3)(A) establishes a NO_x emission specification of 2.00 g/hp-hr for lean-burn engines placed into service before June 1, 2007. Proposed new subsection (a)(3)(B) establishes a NO_x emission specification of 1.50 g/hp-hr for lean-burn engines placed into service on or after June 1, 2007. The commission is proposing these specifications based on informal comments received during the stakeholder process and staff recommendations.

The commission estimates that approximately 850 stationary gas-fired engines would require combustion modifications or post-combustion control in order to meet these proposed emission specifications. NSCR technology is anticipated to be the primary control technology that would be used for rich-burn engines to meet the proposed emission specifications. Some engines with maximum rated capacities equal to or greater than 500 hp may have to install an additional catalyst module with the NSCR control package in order to comply with the more stringent 0.50 g/hp-hr emission specification. No landfill gas-fired rich-burn engines were identified in the counties impacted by this proposed rule. Should a landfill gas-fired rich-burn engine become subject to this proposed rule, the 0.60 g/hp-hr emission specification is consistent with the emission specifications for this category of engines in the Houston-Galveston-Brazoria ozone nonattainment area and is achievable through combustion modifications rather than installation of NSCR.

One possible control technology available for lean-burn engines is the application of an EGR kit (in order to reduce the excess O_2) combined with NSCR control. While NSCR is not normally applied to lean-burn engines, the use of the EGR kit reduces exhaust gas O_2 and allows NSCR to be installed. It is possible that owners or operators of some lean-burn engines may not be able to apply the EGR kit coupled with NSCR. In these instances, engine modifications identified by EPA as low-emission combustion (LEC) modifications are anticipated to be necessary to comply with the emission specifications. SCR is another possible control technology that may be applied to lean-burn engines to meet the emission specifications; however, because there are other technologies that can achieve equivalent reductions, SCR should not be necessary to achieve the proposed emission specifications.

A block one-hour averaging time for determining compliance with the NO_x emission specifications is specified in proposed new §117.3310(b). The block one-hour average must be calculated in the units of the applicable standard. Proposed new §117.3310(c) specifies that the maximum rated capacity used to determine the

applicability of the emission specifications of §117.3310(a), or the exemption status of a unit under §117.3303(1), must be the greater of the maximum rated capacity as of December 31, 2000, or the maximum rated capacity after December 31, 2000.

Proposed new §117.3310(d) specifies that a unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, must be classified as a stationary gas-fired engine for the purposes of this proposed rule. Proposed new §117.3310(e) establishes emission specifications for CO and ammonia, and specifies that the owner or operator of any unit subject to the NO_x emission specifications of subsection (a), shall not allow the discharge into the atmosphere emissions in excess of the emission specifications in proposed new subsection (e)(1) or (2), except as provided in §117.3325 of this title. To prevent an ancillary increase in other emissions as a result of the implementation of this proposed NO_x control strategy, proposed new §117.3310(e)(1) includes emission specifications for CO. CO emissions are limited to 400 ppmv at 3.0% O_2 on a dry basis, or 3.0 g/hp-hr for stationary internal combustion engines. In addition, proposed new §117.3310(e)(1)(A) and (B) specify the averaging times for demonstrating compliance with the CO emission specification. Proposed new subparagraph (A) specifies a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO, and proposed new subparagraph (B) specifies a one-hour average period, for units not equipped with CEMS or PEMS for CO. Proposed new §117.3310(e)(2) includes an ammonia emission specification for units that inject urea or ammonia into the exhaust stream for NO_x control. The proposed ammonia emission specifications are 10 ppmv at 15% O_2, dry basis, for gas-fired lean-burn engines, and 10 ppmv at 3.0% O_2, dry basis, for all others. The averaging times for these ammonia specifications are specified in proposed new §117.3310(e)(2)(A) and (B). Subparagraph (A) specifies a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia. Subparagraph (B) specifies a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia. Finally, proposed new §117.3310(f) specifies that an owner or operator may use emission reductions credits as specified in §117.9800 of this title to comply with the NO_x emission specifications of this section.

Section 117.3325, Alternative Case Specific Specifications

Proposed new §117.3325, Alternative Case Specific Specifications, sets forth provisions for alternative case emission specifications for CO and ammonia. Proposed §117.3325(a) specifies that the executive director may approve emission specifications different from the CO or ammonia specifications for a unit where a person can demonstrate that the affected unit cannot attain the CO or ammonia specifications of §117.3310(e). Proposed subsection (a)(1) specifies that the executive director shall consider on a case-by-case basis the technological and economic circumstances of the individual unit. Proposed subsection (a)(2) requires that the executive director must determine that such specifications are the result of the lowest emission specification the unit is capable of meeting after the application of controls to meet the NO_x emission specifications of §117.3310. Proposed subsection (a)(3) specifies that the executive director, in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant at which the unit is located to meet emission specifications through system-wide averaging at maximum capacity. Finally, proposed §117.3325(b) specifies that any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision, and that the requirements of §50.139 (relating to Motion to Overturn Executive Director's Decision) apply to §117.3325.

Section 117.3330, Operating Requirements

Operating requirements for units subject to the emission specifications of the division are listed in proposed new §117.3330. Proposed new §117.3330(a) specifies that the owner or operator shall operate any unit subject to the emission specifications in compliance with those specifications. Proposed new §117.3330(b) specifies that all units subject to the emission specifications must be operated so as to minimize NO_x emissions consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Proposed new §117.3330(b)(1) requires that each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity. Proposed new §117.3330(b)(2) requires that each stationary internal combustion engine controlled with NSCR must be equipped with an automatic AFR controller that operates on exhaust O_2 or CO control and maintains the AFR in the range required to meet the engine's applicable emission specifications. Proposed new §117.3330(b)(3) requires that each stationary internal combustion engine must be checked for proper operation according to proposed new §117.8140(b). This testing includes recorded measurements of NO_x and CO emissions at least quarterly and as soon as practicable within two weeks after each occurrence of engine maintenance that may reasonably be expected to increase emissions, O_2 sensor replacement, catalyst cleaning, or catalyst replacement. Proposed new §117.8140(b) also specifies that stain tubes and portable NO_x analyzers are acceptable for this documentation. The quarterly emission testing is not required for those engines whose monthly run time does not exceed ten hours; however, this exemption does not apply to the requirement to test emissions after installation of controls, major repair work, or any time the owner or operator has reason to believe the emissions may have changed.

Section 117.3335, Monitoring, Notification, and Testing Requirements

Proposed new §117.3335 specifies the monitoring, notification, and testing requirements. Proposed new §117.3335(a) and (b) require that if the owner or operator installs a CEMS or PEMS to monitor O_2 or NO_x, the CEMS or PEMS must meet the requirements of proposed new §117.8100(a) or (b), as applicable. Proposed new §117.3335(c) specifies that if the owner or operator elects to install CEMS or PEMS, the installation and certification of the monitoring systems must be in accordance with the compliance schedule in §117.9340.

Proposed new §117.3335(d) lists the testing requirements of units subject to the emission specifications of §117.3310. Proposed §117.3335(d)(1) requires that each unit must be tested for NO_x, CO, and O_2 emissions and proposed subsection (d)(2) requires that each unit that injects urea or ammonia for NO_x control be tested for ammonia emissions. Proposed subsection (d)(3) requires that all testing be conducted according to proposed new §117.8000, which includes the general stack testing procedures and methods for Chapter 117. The specific requirements of proposed new §117.8000 are discussed later in

this preamble. Proposed new §117.3335(d)(3) also specifies the owner or operator of a natural gas-fired engine may use ASTM D6522-00 to perform the NO_x, CO, and O_2 testing required in lieu of the methods specified in §117.8000. If ASTM D6522-00 is used, the test report must contain the information specified in proposed new §117.8010.

Proposed new subsection (d)(4) requires that test results must be reported in the units of the applicable emission limits and averaging periods. Proposed new §117.3335(d)(5) specifies that, for units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device. Proposed new §117.3335(d)(6) specifies that on units operating with CEMS or PEMS, initial compliance with the emission specifications of §117.3310 of this title may be demonstrated using the CEMS or PEMS, after monitor certification testing, in lieu of the methods specified in §117.3335(d)(3).

Proposed new §117.3335(d)(7) specifies retesting requirements for units not operating with CEMS or PEMS. Engines must be periodically tested according to proposed new §117.8140(a). The specific procedures and requirements in proposed new §117.8140(a) are discussed later in this preamble. In addition, proposed new §117.3335(d)(7)(A) requires retesting within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate. Proposed new §117.3335(d)(7)(B) allows retesting at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), FGR, and fuel-lean and conventional (fuel-rich) reburn. Proposed new §117.3335(d)(8) specifies that testing be performed in accordance with the schedule specified in §117.9340.

Proposed new §117.3335(e) requires that each unit that injects urea or ammonia into the exhaust stream for NO_x control must be monitored according to one of the ammonia monitoring procedures specified in proposed new §117.8130. These ammonia monitoring procedures include the use of the mass balance equation in §117.8130(1), the molybdenum oxidizer and NO_x analyzer approach in §117.8130(2), the use of stain tubes in §117.8130(3), or other methods approved by the executive director as allowed in §117.8130(4). Proposed new §117.3335(f) requires the owner or operator of an affected source to submit written notification of any CEMS or PEMS RATA or testing required under this section, except for any testing related to the ammonia monitoring specified in §117.3335(e), to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

Section 117.3345, Recordkeeping and Reporting Requirements

Proposed new §117.3345(a) requires that the owner or operator of a unit subject to the emission specifications of §117.3310 maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the EPA, or local air pollution control agencies having jurisdiction. Proposed new §117.3345(a)(1) requires that records of hourly emissions be maintained for each unit using a CEMS or PEMS. Proposed new §117.3345(a)(2) specifies records for each stationary internal combustion engine subject to the emission specifications of §117.3310, including: emissions measurements required by §117.3330(b)(3); and catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken. Proposed new subsection (a)(3) requires records of the CO measurements specified in §117.3330(b)(3). Proposed new subsection (a)(4) requires records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems. Proposed new subsection (a)(5) requires the owner or operator to maintain records of the results of performance testing and proposed new subsection (a)(6) requires records of the ammonia monitoring required by §117.3335(e).

Proposed new §117.3345(b) specifies that written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.3303(5) of this title or §117.3330(b)(3) of this title. Proposed new §117.3330(b)(3) references the engine testing provisions in proposed new §117.8140(b), which also includes an exemption for which proposed new §117.3345(b) would require written records. In addition, for each engine claimed exempt under §117.3303(5) of this title, written records must be maintained that reflect the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the EPA, or any local air pollution control agency having jurisdiction.

Proposed new §117.3345(c) specifies that, except for the ammonia monitoring requirements of proposed §117.3335(e), the owner or operator of an affected unit must furnish the appropriate regional office and the Office of Compliance and Enforcement reports of all testing and monitor certification required under proposed new §117.3335. Reports must be submitted for review and approval within 60 days after completion of the testing and must contain the information specified in proposed new §117.8010.

SUBCHAPTER F, ACID MANUFACTURING

The commission proposes a new Chapter 117, Subchapter F, entitled Acid Manufacturing, that incorporates the divisions and associated rule language of the existing Chapter 117, Subchapter C, Acid Manufacturing.

DIVISION 1, ADIPIC ACID MANUFACTURING

The commission proposes a new Chapter 117, Subchapter F, Division 1, entitled Adipic Acid Manufacturing, that incorporates rule language from the existing Chapter 117, Subchapter C, Division 1, Adipic Acid Manufacturing.

Section 117.4000, Applicability

The commission proposes a new §117.4000 that incorporates the rule language from existing §117.301, concerning the applicability for adipic acid manufacturing.

Section 117.4005, Emission Specifications

The commission proposes a new §117.4005 that incorporates the rule language from existing §117.305 concerning the emis-

sion specifications for units subject to the Adipic Acid Manufacturing Division.

Section 117.4025, Alternative Case Specific Specifications

The commission proposes a new §117.4025 that incorporates the rule language from existing §117.321, concerning provisions for alternative case specific specifications for units that cannot attain the emission specifications in proposed new §117.4005.

Section 117.4035, Initial Demonstration of Compliance

The commission proposes a new §117.4035 that incorporates the rule language from existing §117.311, concerning initial demonstration of compliance for units subject to the emission specifications in proposed new §117.4005.

Section 117.4040, Continuous Demonstration of Compliance

The commission proposes a new §117.4040 that incorporates the rule language from existing §117.313, concerning continuous demonstration of compliance for units subject to the emission specifications in proposed new §117.4005. Proposed new §117.4040(a) - (e) incorporate the rule language from existing §117.313(a) - (e). In addition, for proposed new §117.4040(c), the reference to existing §117.213(f) is proposed to be changed to reference proposed new §117.8100(b). The requirements for PEMS in existing §117.213(f) are proposed to be incorporated in proposed new §117.8100(b).

Section 117.4045, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.4045 that incorporates the rule language from existing §117.319, concerning notification, recordkeeping, and reporting requirements for affected facilities subject to the emission specifications in proposed new §117.4005.

Section 117.4050, Control Plan Procedures

The commission proposes a new §117.4050 that incorporates the rule language from existing §117.309, concerning the control plan procedures for persons affected by the division.

DIVISION 2, NITRIC ACID MANUFACTURING - OZONE NONATTAINMENT AREAS

The commission proposes a new Chapter 117, Subchapter F, Division 2, entitled Nitric Acid Manufacturing - Ozone Nonattainment Areas, that incorporates rule language from the existing Chapter 117, Subchapter C, Division 2, Nitric Acid Manufacturing - Ozone Nonattainment Areas.

Section 117.4100, Applicability

The commission proposes a new §117.4100 that incorporates the rule language from existing §117.401, concerning the applicability for nitric acid manufacturing in ozone nonattainment areas.

Section 117.4105, Emission Specifications

The commission proposes a new §117.4105 that incorporates the rule language from existing §117.405, concerning the emission specifications for affected nitric acid manufacturing units in ozone nonattainment areas.

Section 117.4125, Alternative Case Specific Specifications

The commission proposes a new §117.4125 that incorporates the rule language from existing §117.421, concerning provisions for alternative case specific specifications for units that cannot attain the emission specifications in proposed new §117.4105.

Section 117.4135, Initial Demonstration of Compliance

The commission proposes a new §117.4135 that incorporates the rule language from existing §117.411, concerning initial demonstration of compliance for units subject to the emission specifications in proposed new §117.4105.

Section 117.4140, Continuous Demonstration of Compliance

The commission proposes a new §117.4140 that incorporates the rule language from existing §117.413, concerning continuous demonstration of compliance for units subject to the emission specifications in proposed new §117.4105. Proposed new §117.4140(a) - (e) incorporate the rule language from existing §117.413(a) - (e). In addition, for proposed new §117.4140(c), the reference to existing §117.213(f) is proposed to be changed to reference proposed new §117.8100(b). The requirements for PEMS in existing §117.213(f) are proposed to be incorporated in proposed new §117.8100(b).

Section 117.4145, Notification, Recordkeeping, and Reporting Requirements

The commission proposes a new §117.4145 that incorporates the rule language from existing §117.419, concerning notification, recordkeeping, and reporting requirements for affected facilities subject to the emission specifications in proposed new §117.4105.

Section 117.4150, Control Plan Procedures

The commission proposes a new §117.4150 that incorporates the rule language from existing §117.409, concerning the control plan procedures for persons affected by the division.

DIVISION 3, NITRIC ACID MANUFACTURING - GENERAL

The commission proposes a new Chapter 117, Subchapter F, Division 3, entitled Nitric Acid Manufacturing - General, that incorporates rule language from the existing Chapter 117, Subchapter C, Division 3, Nitric Acid Manufacturing - General.

Section 117.4200, Applicability

The commission proposes a new §117.4200 that incorporates the rule language from existing §117.451, concerning the general applicability for nitric acid production units, except for units in applicable ozone nonattainment areas.

Section 117.4205, Emission Specifications

The commission proposes a new §117.4205 that incorporates the rule language from existing §117.455 concerning the emission specification for affected nitric acid production units.

Section 117.4210, Applicability of Federal New Source Performance Standards

The commission proposes a new §117.4210 that incorporates the rule language from existing §117.458, concerning the applicability of 40 CFR Part 60, Subpart G (Standards of Performance for Nitric Acid Plants).

SUBCHAPTER G, GENERAL MONITORING AND TESTING REQUIREMENTS

The commission proposes a new Chapter 117, Subchapter G that incorporates general monitoring and testing requirements from various divisions of Chapter 117 that are commonly cross-referenced from other divisions.

DIVISION 1, COMPLIANCE STACK TESTING AND REPORT REQUIREMENTS

Section 117.8000, Stack Testing Requirements

The commission proposes a new §117.8000, Stack Testing Requirements, that incorporates the common stack testing requirements from existing §117.211(e) and §117.479(e), concerning testing requirements for initial demonstration of compliance. Proposed new §117.8000(a) specifies that the requirements of proposed new §117.8000 are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8000, the relevant section of Chapter 117 would reference proposed new §117.8000. Proposed new §117.8000(b) incorporates language from §117.479(e)(3) specifying that shorter test times may be used, if approved by the executive director. This provision is not included in existing §117.211(e), and incorporating the language in proposed new §117.8000(b) would ensure that the executive director has sufficient flexibility to consider allowing shorter test times, if warranted, whether the testing is conducted at sites that are minor or major sources of NO_x.

Proposed new §117.8000(c)(1) - (3), (5), and (6) incorporate the test method requirements from existing §117.211(e)(1) - (5). Also, proposed new §117.8000(c)(5) updates the section references to Test Method 1 and Performance Specification 2, because the EPA has reformatted the test methods and performance specifications from 40 CFR Part 60, Appendices A and B. The reference to §2.1 of Test Method 1 is proposed to be changed to §11.1, and the reference to §3.2 of Performance Specification 2 is proposed to be changed to §8.1.3. In addition, the commission proposes a new §117.8000(c)(4) to specify that, for units that inject ammonia or urea to control NO_x emissions, the methods required to determine ammonia are the Phenol-Nitroprusside Method, the Indophenol Method, or EPA Conditional Test Method 27. The initial demonstration of compliance requirements from existing §117.211 require ammonia testing on units that inject urea or ammonia for NO_x control; however, existing §117.211 does not specify methods for conducting the ammonia testing. The methods in proposed new §117.8000(c)(4) are the same methods required to determine the correction factor "d" from the mass balance equation approach of monitoring for ammonia slip in existing §117.114 and §117.214. The commission is soliciting comments specifically regarding including the specified ammonia test methods in proposed new §117.8000(c)(4).

Finally, proposed new §117.8000(d) incorporates the language from existing §117.211(e)(6), concerning the provisions for EPA-approved alternative test methods and minor modifications to test methods.

Section 117.8010, Compliance Stack Test Reports

The commission proposes a new §117.8010, Compliance Stack Test Reports, that incorporates the compliance stack test report content requirements from existing §117.211(g) that was commonly referenced from other divisions. Proposed new §117.8010 specifies that the requirements of proposed new §117.8010 are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8010, the relevant section of Chapter 117 would reference proposed new §117.8010. The report content requirements from existing §117.211(g)(1) - (8) are incorporated in proposed new §117.8010(1) - (8). Also, proposed new §117.8010(8)(B) updates the section reference to Performance Specification 2, because the EPA has reformatted the test methods and performance specifications from 40 CFR Part 60, Appendices A and B. The reference to §9 of Performance Specification 2 is proposed to be changed to §8.5.

DIVISION 2, EMISSION MONITORING

The commission proposes a new Chapter 117, Subchapter G, Division 2, Emission Monitoring, that incorporates general monitoring requirements from various divisions of Chapter 117 that are commonly cross-referenced from other divisions.

Section 117.8100, Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources

The commission proposes a new §117.8100, that incorporates the general requirements from existing §117.213(e) and (f) for CEMS and PEMS used at industrial, commercial, and institutional sources to comply with a monitoring requirement of Chapter 117. Proposed new §117.8100(a) specifies that the requirements for CEMS in proposed new §117.8100(a) are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8100(a), the relevant section of Chapter 117 would reference proposed new §117.8100. The requirements for CEMS in existing §117.213(e)(1) - (3), (5), and (6) are proposed to be incorporated in proposed new §117.8100(a)(1) - (6). Existing §117.213(e)(4) includes CEMS requirements specific to the Houston-Galveston-Brazoria ozone nonattainment area and is not proposed to be included in proposed new §117.8100(a).

Proposed new §117.8100(b) specifies that the requirements for PEMS in proposed new §117.8100(b) are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8100(b), the relevant section of Chapter 117 would reference proposed new §117.8100. The requirements for PEMS in existing §117.213(f)(2) - (7) are proposed to be incorporated in proposed new §117.8100(b)(1) - (6). Existing §117.213(f)(1) specifies that the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of the division, and is not proposed to be incorporated in proposed new §117.8100(b) because division-specific requirements might apply.

The commission proposes a new §117.8100(c) that specifies that reports of any RATA performed in accordance with §117.8100 must comply with the proposed new §117.8010, concerning compliance stack test report contents. Proposed new §117.8100(c) is necessary to clarify that the report for any RATA performed in accordance with §117.8100(a) or (b) must still meet the report content requirements.

Section 117.8110, Emission Monitoring System Requirements for Utility Electric Generation Sources

The commission proposes a new §117.8110, that incorporates the general requirements from existing §117.113(c) and (f) for CEMS and PEMS used at utility electric generation sources to comply with a monitoring requirement of Chapter 117. The requirements for CEMS and PEMS at utility electric generation sources in existing §117.113(c) and (f) are sufficiently different from the requirements for industrial, commercial, and institutional sources in existing §117.213 that combining the requirements for both source categories would result in significant substantive changes impacting owners and operators. Therefore, the commission has proposed to maintain the monitoring system requirements for CEMS and PEMS at a utility electric generation source separate from other source categories. Proposed new §117.8110(a) specifies that the requirements for

CEMS in proposed new §117.8110(a) are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8110(a), the relevant section of Chapter 117 would reference proposed new §117.8110. The requirements for CEMS in existing §117.113(c)(1) and (2) are proposed to be incorporated in proposed new §117.8110(a)(1) and (2). Existing §117.113(c)(3) is a Houston-Galveston-Brazoria ozone nonattainment area specific requirement for CEMS and is not proposed to be incorporated into §117.8110(a).

Proposed new §117.8110(b) specifies that the requirements for PEMS in proposed new §117.8110(b) are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8110(b), the relevant section of Chapter 117 would reference proposed new §117.8110. The requirements for PEMS in existing §117.113(f)(2) - (4) are proposed to be incorporated in proposed new §117.8110(b)(1) - (3). Existing §117.113(f)(1) specifies that the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of the division, and is not proposed to be incorporated in proposed new §117.8110(b) because division-specific requirements might apply. In addition, the reference in existing §117.113(f)(4)(B) to existing §117.213(f) is proposed to be changed to §117.8100(b), because the applicable requirements from §117.213(f) are proposed to be incorporated in new §117.8100(b).

Section 117.8120, Carbon Monoxide (CO) Monitoring

The commission proposes a new §117.8120, that incorporates the CO monitoring requirements from existing §117.113(b) and §117.213(d), and the optional CO monitoring requirements from existing §117.143(b). Proposed new §117.8120 specifies that the requirements for CO monitoring in proposed new §117.8120 are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8120, the relevant section of Chapter 117 would reference proposed new §117.8120. The references to applicable subsections for CEMS or PEMS used to monitor CO in existing §§117.113(b)(1), 117.143(b)(1), and 117.213(b)(1) are proposed to be changed to proposed new §117.8100(a) or §117.8110(a) and §117.8100(b) or §117.8110(b), as applicable.

Section 117.8130, Ammonia Monitoring

The commission proposes a new §117.8130, that incorporates the ammonia monitoring requirements from existing §117.114(a)(4) and §117.214(a)(1)(D) that are commonly referenced from various divisions of Chapter 117. Proposed new §117.8130 specifies that the requirements for ammonia monitoring in proposed new §117.8130 are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8130, the relevant section of Chapter 117 would reference proposed new §117.8130. Existing §117.114(a)(4)(A) - (D) and §117.214(a)(1)(D)(i) - (iv) are incorporated in proposed new §117.8030(1) - (4). The O_2 correction for ammonia concentrations to 3.0% for boilers and 15% gas turbines in the equation in existing §117.114(a)(4)(A) is identical to the O_2 corrections for boilers and gas turbines in existing §117.214(a)(1)(D)(i); therefore, proposed new §117.8030(1) incorporates the O_2 correction criteria for the ammonia concentrations from §117.214(a)(1)(D)(i). The methods specified for variable "d" of the equations in §117.114(a)(4)(A) and §117.214(a)(1)(D)(i) are identical and are proposed to be incorporated in proposed new §117.8000(c)(4). Variable "d" of the equation in proposed new §117.8130(1) is proposed to specify that the correction factor is the ratio of measured slip to calculated ammonia slip, where the measured slip is obtained from the stack sampling for ammonia during an initial demonstration of compliance required by Chapter 117 and using the methods specified in proposed new §117.8000.

Section 117.8140, Emission Monitoring for Engines

The commission proposes a new §117.8140, that incorporates certain testing requirements for stationary internal combustion engines from existing §§117.208(d)(7), 117.213(g)(1), 117.214(b)(2), and 117.478(b)(5). Proposed new §117.8140(a), concerning periodic testing for engines, specifies that the requirements in proposed new §117.8140(a) are applicable when required by a provision of Chapter 117. When owners or operators are required to comply with §117.8140(a), the relevant section of Chapter 117 would reference proposed new §117.8140(a). Proposed new §117.8140(a)(1) - (3) incorporate the engine testing provisions for NO_x and CO from §117.213(g)(1)(A) - (C). Proposed new §117.8140(a)(1) specifies that the methods in proposed new §117.8000 must be used. The provisions for testing on a biennial calendar basis or with 15,000 hours of operation in existing §117.213(g)(1)(B) are incorporated in proposed new §117.8140(a)(2). The exemption from periodic testing in existing §117.213(g)(1)(C) for engines used exclusively in emergency situations is incorporated in proposed new §117.8140(a)(3).

Proposed new §117.8140(b), concerning checks for proper operation of engines, specifies that the requirements in proposed new §117.8140(a) are applicable when required by a provision of Chapter 117. Proposed new §117.8140(b) incorporates the engine-testing provisions for proper operation from §§117.208(d)(7), 117.214(b)(2)(A), and 117.478(b)(5). The exemption from quarterly testing for engines with a monthly run time of 10 hours or less in existing §117.214(b)(2)(A) and §117.478(b)(5) is only applicable in the Houston-Galveston-Brazoria ozone nonattainment area. This exemption is not in §117.208(d)(7). The commission is proposing to incorporate the exemption for engines with a monthly run time of 10 hours or less in proposed new §117.8140(b), expanding the applicability of the exemption to affected engines in the Beaumont-Port Arthur and Dallas-Fort Worth ozone nonattainment areas. The provision in existing §117.214(b)(2)(A) and §117.478(b)(5) that specifies the exemption does not diminish the requirement to test emissions after installation of controls, major repair work, or any time the owner or operator believes emissions may have changed is also proposed to be incorporated in proposed new §117.8140(b).

SUBCHAPTER H, ADMINISTRATIVE PROVISIONS

The commission proposes a new Chapter 117, Subchapter H, entitled Administrative Provisions, that incorporates the administrative provisions from existing Chapter 117, Subchapter E, concerning compliance schedules and certain compliance flexibility provisions, and includes new compliance schedules and changes to reflect new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration.

DIVISION 1, COMPLIANCE SCHEDULES

The commission proposes a new Chapter 117, Subchapter H, Division 1, entitled Compliance Schedules, that incorporates the compliance schedules from existing Chapter 117, Subchapter E, §§117.510, 117.512, 117.520, 117.524, 117.530, and 117.534, and includes new compliance schedules and changes to reflect new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration.

Section 117.9000, Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources

The commission proposes a new §117.9000 that incorporates the compliance schedule rule language from existing §117.520(a), applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.9000(1) incorporates the rule language from existing §117.520(a)(1), concerning the compliance schedule for RACT requirements. Proposed new §117.9000(2) incorporates the rule language from existing §117.520(a)(2), concerning the compliance schedule for lean-burn engine requirements, and proposed new §117.9000(3) incorporates the rule language from existing §117.520(a)(3), concerning the compliance schedule for requirements associated with the emission specifications for attainment demonstration. In addition, as previously indicated in this preamble, the commission is proposing to incorporate general requirements from existing §117.213 for CEMS and PEMS at industrial, commercial, and institutional sources in a new §117.8100. Therefore, for proposed new §117.9000(1)(B)(i) and (3)(B)(iii), the commission proposes to change the reference for the CEMS or PEMS performance evaluation and quality assurance procedures from existing §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) to the proposed new §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A). Also, existing §117.520(a)(3)(C)(ii) incorrectly references to semiannual reports required by existing §117.213(c)(1)(C). Existing §117.213(c)(1)(C) does not include a requirement for semiannual reports. Therefore, the commission proposes to exclude this cross-reference from the proposed new §117.9000(3)(C)(ii).

Section 117.9010, Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources

The commission proposes a new §117.9010 that incorporates the compliance schedule rule language from existing §117.520(b), applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.9010(1) incorporates the rule language from existing §117.520(b)(1)(A). Proposed new §117.9010(2) incorporates the rule language from existing §117.520(b)(1)(B). As previously indicated in this preamble, the commission is proposing to incorporate general requirements from existing §117.213 for CEMS and PEMS at industrial, commercial, and institutional sources in a new §117.8100. Therefore, for proposed new §117.9010, the commission proposes to change the reference for the CEMS or PEMS performance evaluation and quality assurance procedures from existing §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) to the proposed new §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A).

In addition, the compliance schedule in existing §117.520(b)(2), for engines subject to existing §117.206(b)(3), is proposed to be incorporated in proposed new §117.9030, concerning the compliance schedule for the Dallas-Fort Worth eight-hour ozone nonattainment area. The applicability for existing §117.520(b)(2) is the nine-county area of the Dallas-Fort Worth eight-hour ozone nonattainment area and proposed new §117.9030 is the most appropriate location to incorporate these requirements.

Section 117.9020, Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources

The commission proposes a new §117.9020 that incorporates the compliance schedule rule language from existing §117.520(c), applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.9020(1) incorporates the rule language from existing §117.520(c)(1), concerning the compliance schedule for RACT requirements. Proposed new §117.9020(2) incorporates the rule language from existing §117.520(c)(2), concerning the compliance schedule for requirements associated with the emission specifications for attainment demonstration. In addition, as previously indicated in this preamble, the commission is proposing to incorporate general requirements from existing §117.213 for CEMS and PEMS at industrial, commercial, and institutional sources in a new §117.8100. Therefore, for proposed new §117.9020, the commission proposes to change the reference for the CEMS or PEMS performance evaluation and quality assurance procedures from existing §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) to the proposed new §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A).

Finally, for proposed new §117.9020(2)(B)(ii), the commission proposes to revise the compliance schedule language in existing §117.520(c)(2)(B)(ii) regarding submitting the certification of activity level for electric generating facilities subject to the system cap in existing §117.210. The current language in existing §117.520(c)(2)(B)(ii) might be incorrectly interpreted that an owner or operator is required to use the first two consecutive third quarters of actual activity level data out of the first five years of operation. The commission's intent in existing §117.210 and §117.520(c)(2)(B)(ii) is that the owner or operator may select any two consecutive third quarters of actual level of activity data out of the first five years of operation, and that the selection must be made no later than 60 days after the end of the first five years of operation. Therefore, the language in proposed new §117.9020(2)(B)(ii) is revised to specify this requirement more accurately.

Section 117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources

The commission proposes a new §117.9030, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources, that specifies the compliance schedules for units subject to the emissions specifications of §117.410 and §117.423.

Proposed new §117.9030(a) specifies the compliance schedule for any stationary, reciprocating, internal combustion engines subject to the emission specifications of §117.410(a), and incorporates the existing compliance schedule rule language from existing §117.520(b)(2). Proposed new §117.9030(a)(1) incorporates the rule language from existing §117.520(b)(2)(A). Proposed new §117.9030(a)(2) and (a)(2)(A) - (D) incorporate the rule language from existing §117.520(b)(2)(B) and (B)(i) - (iv).

In addition, for proposed new §117.9030(a)(1)(C), the commission is proposing to revise the requirement in existing §117.520(b)(2)(B)(iii) to submit final control plans required by existing §117.215. As previously indicated in this preamble, the commission is proposing to incorporate the requirements for engines subject to existing §117.206(b)(3) and §117.520(b)(2) in the proposed new division for the Dallas-Fort Worth eight-hour ozone nonattainment area. Existing §117.520(b)(2)(B)(iii) incorrectly references the final control plan procedures for RACT. The correct cross-reference for final control plans for engines subject to existing §117.206(b)(3) should be existing §117.216, Final Control Plan Procedures for Attainment Demonstration Emission Specifications. Therefore, the applicable final control plan procedures for attainment demonstration emission specifications for the engines under proposed new Subchapter B, Division 3 are in proposed new §117.454. Because this proposed change could result in a change in the information

required, the commission is proposing to change the compliance date in proposed new §117.9030(a)(1)(C) for submitting the final control plans to January 1, 2008. The commission is soliciting comment on this specific change to the final control plan requirements for engines subject to existing §117.206(b)(3) and §117.520(b)(2). The commission is not proposing to change, nor accepting comment on, any other existing compliance schedule requirements from existing §117.520(b)(2).

Proposed new §117.9030(b) specifies the compliance schedule requirements for units subject to the emissions specifications of §117.410(b). Proposed new §117.9030(b)(1) requires the owner or operator of any stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.410(b) to submit the initial control plan required by §117.450 of this title no later than June 1, 2008, and to comply with all other requirements of Subchapter B, Division 4 as soon as practicable, but no later than March 1, 2009.

Proposed new §117.9030(b)(2) specifies the owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after March 1, 2009, shall comply with the requirements of Subchapter B, Division 4 as soon as practicable, but no later than 60 days after becoming subject. For example, new units placed into service after March 1, 2009, would be required to comply within 60 days after startup of the unit. Existing units previously exempt from the rule, but no longer qualifying for that exemption after March 1, 2009, would be required to comply with the proposed rule no later that 60 days after the date that the exemption status was lost.

Section 117.9100, Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes a new §117.9100 that incorporates the compliance schedule rule language from existing §117.510(a), applicable to the Beaumont-Port Arthur ozone nonattainment area. Proposed new §117.9100(1) incorporates the rule language from existing §117.510(a)(1), concerning the compliance schedule for RACT requirements. Proposed new §117.9100(2) incorporates the rule language from existing §117.510(a)(2), concerning the compliance schedule for requirements associated with the emission specifications for attainment demonstration.

Section 117.9110, Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes a new §117.9110 that incorporates the compliance schedule rule language from existing §117.510(b), applicable to the Dallas-Fort Worth ozone nonattainment area. Proposed new §117.9110(1) incorporates the rule language from existing §117.510(b)(1), concerning the compliance schedule for RACT requirements. Proposed new §117.9110(2) incorporates the rule language from existing §117.510(b)(2), concerning the compliance schedule for requirements associated with the emission specifications for attainment demonstration.

Section 117.9120, Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes a new §117.9120 that incorporates the compliance schedule rule language from existing §117.510(c), applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.9120(1) incorporates the rule language from existing §117.510(c)(1), concerning the compliance schedule for RACT requirements. Proposed new §117.9120(2) incorporates the rule language from existing §117.510(c)(2), concerning the compliance schedule for requirements associated with the emission specifications for attainment demonstration.

Section 117.9130, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources

The commission proposes a new §117.9130, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources, that specifies the compliance schedule for owners or operators subject to the proposed new Subchapter C, Division 4. Proposed new §117.9130(a) specifies the compliance schedule for existing units subject to the proposed rule. Proposed new §117.9130(a)(1) requires the owner or operator to submit the initial control plan required by proposed new §117.1350 by no later than June 1, 2008. Proposed new §117.9130(a)(2) specifies that the owner or operator must comply with all other requirements of proposed new Subchapter C, Division 4 as soon as practicable, but no later that March 1, 2009. Finally, the commission proposes a new §117.9130(b) that specifies, for units in the Dallas-Fort Worth eight-hour ozone nonattainment area that become subject to proposed new Subchapter C, Division 4 on or after March 1, 2009, the owner or operator must comply as soon as practicable, but no later than 60 days after becoming subject.

Section 117.9200, Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources

The commission proposes a new §117.9200 that incorporates the compliance schedule rule language from existing §117.534, concerning the compliance schedule for boilers, process heaters, and stationary engines and gas turbines at minor sources, applicable to the Houston-Galveston-Brazoria ozone nonattainment area. Proposed new §117.9200(1) incorporates the rule language from existing §117.534(1), concerning the compliance schedule for sources subject to the Mass Emission Cap and Trade Program. Proposed new §117.9200(2) incorporates the rule language from existing §117.534(2), concerning the compliance schedule for sources not subject to the Mass Emission Cap and Trade Program. In addition, as previously indicated in this preamble, the commission is proposing to incorporate general requirements from existing §117.213 for CEMS and PEMS at industrial, commercial, and institutional sources in a new §117.8100. Therefore, for proposed new §117.9200, the commission proposes to change the reference for the CEMS or PEMS performance evaluation and quality assurance procedures from existing §117.213(e)(1)(A) and (B) and (f)(3) - (5)(A) to the proposed new §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A).

Section 117.9210, Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources

Proposed new §117.9210 specifies the compliance schedule for sources subject to the proposed new Subchapter D, Division 2, Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources. Proposed new §117.9210(a) specifies the owner or operator of each stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is not a major source

of NO_x shall comply with the requirements of Subchapter D, Division 2 as soon as practicable, but no later than March 1, 2009. Proposed new §117.9210(b) specifies the owner or operator of any stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that becomes subject to the requirements of Subchapter D, Division 2 on or after March 1, 2009, must comply with the requirements of Subchapter D, Division 2 as soon as practicable, but no later than 60 days after becoming subject.

Section 117.9300, Compliance Schedule for Utility Electric Generation in East and Central Texas

The commission proposes a new §117.9300 that incorporates the compliance schedule rule language from existing §117.512, concerning the compliance schedule for utility electric generation in East and Central Texas. Proposed new §117.9300(1) incorporates the rule language from existing §117.512(1), and proposed new §117.9300(2) incorporates the rule language from existing §117.512(2).

Section §117.9320, Compliance Schedule for Cement Kilns

The commission is proposing a new §117.9320 that incorporates the rule language regarding the compliance schedule for cement kilns from existing §117.524. Proposed new §117.9320(a) and (b) incorporate the rule language from existing §117.524(a) and (b), respectively. In addition, for proposed new §117.9320(a), the commission proposes to add the language "Except as specified in subsection (c) of this section . . .." This change is necessary to clarify that the compliance schedule in subsection (a) is not applicable to the new proposed requirements in §§117.3123, 117.3142, and 117.3145.

A new §117.9320(c) is proposed to specify that the owner or operator of each portland cement kiln in Ellis County must be in compliance with the requirements of §117.3123 and §117.3142, and the applicable requirements of §117.3145 as soon as practicable, but no later than March 1, 2009. In addition, proposed new §117.9320(c) specifies that the provisions in proposed new §117.9320(b), regarding extension of compliance schedules, do not apply to subsection (c) or the requirements of §117.3123, §117.3142, or the applicable requirements of §117.3145. Proposed new §117.9320(c) is necessary to ensure that the required reductions under the source cap of proposed §117.3123 occur by the date necessary to demonstrate attainment.

Section 117.9340, Compliance Schedule for East Texas Combustion

The commission proposes a new §117.9340 to specify the compliance schedule for owner or operators to comply with the requirements of Chapter 117, Subchapter E, Division 4, East Texas Combustion. Proposed §117.9340(a) specifies that the owner or operator of each stationary, reciprocating internal combustion engine subject to Subchapter E, Division 4 must comply with the requirements of Subchapter E, Division 4 as soon as practicable, but no later than March 1, 2009. Proposed §117.9340(b) specifies that the owner or operator of a stationary, reciprocating internal combustion engine that becomes subject to the requirements of Subchapter E, Division 4 on or after March 1, 2009, must comply with the requirements of that division as soon as practicable, but no later than 60 days after becoming subject.

Section 117.9500, Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources

The commission proposes a new §117.9500 that incorporates the compliance schedule rule language from existing §117.530, concerning the compliance schedule for nitric acid and adipic acid manufacturing sources. Proposed new §117.9300(1) - (3) incorporate the rule language from existing §117.530(1) - (3), respectively.

DIVISION 2, COMPLIANCE FLEXIBILITY

The commission proposes a new Chapter 117, Subchapter H, Division 2, entitled Compliance Flexibility, that incorporates the rule language from existing Chapter 117, §117.570 and §117.571, and includes changes to reflect new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration.

Section 117.9800, Use of Emission Credits for Compliance

The commission proposes a new §117.9800 that incorporates the rule language from existing §117.570, concerning the use of emission credits for compliance. Proposed new §117.9800(a) - (d) incorporate the rule language from existing §117.570(a) - (d), respectively. In addition, proposed new §117.9800(a) is restructured for clarity. The list of applicable sections in existing §117.570(a) is proposed to be listed as separate paragraphs in proposed new §117.9800(a)(1) - (8). Applicable section number references for the new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration are included in proposed new §117.9800(a)(5), (7), and (8). Also, for proposed new §117.9800(d), the list of applicable sections in existing §117.570(d), concerning final control plans, is also proposed to be revised to include proposed new §117.456 and §117.1356.

Section 117.9810, Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP)

The commission proposes a new §117.9810 that incorporates the rule language from existing §117.571, concerning the use of emission reductions generated from the Texas Emissions Reduction Plan. Proposed new §117.9810(a) and (b) incorporate, and restructure for clarity, the rule language from existing §117.571(a). Proposed new §117.9810(a) revises the applicability of §117.571 to include the Dallas-Fort Worth eight-hour ozone nonattainment area. The list of applicable sections in existing §117.571(a) is proposed to be listed as separate paragraphs in proposed new §117.9810(a)(1) - (6). Applicable section number references for the new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration are included in proposed new §117.9810(a)(6). The rule language concerning provisions for obtaining emission reductions generated from TERP in existing §117.571(a)(1) - (6) is proposed to be incorporated in new §117.9810(b) and (b)(1) - (6). Also, for proposed new §117.9810(b)(6), the commission proposes to remove the language "of this division" regarding applicable emission reduction requirements, because this reference has no meaning under the proposed new format for the division that incorporates this rule language. The proposed new §117.9810(b)(6) specifies "applicable emission reduction requirements of this chapter." Finally, proposed new §117.9810(c) incorporates the rule language from existing §117.571(b).

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency. However, the proposed rules may increase the workload for some agency staff. The proposed rules would have fiscal implications, some of which may be significant for other state agencies, units of local governments and federal

entities in the Dallas-Fort Worth eight-hour ozone nonattainment area or in northeast Texas if they own or operate sources of NO_x emissions. The proposed rules may cost all governmental entities as much as $9.6 million to comply with the major NO_x source requirements and the minor NO_x source requirements during the first five years they are in effect. Industry would also experience fiscal implications, which could be significant depending on the entity and the controls required. Total capital, testing, and fuel meter costs for all industries in the areas affected by the proposed rules could range from $255 million to $350.6 million for the first five years the rules are in effect.

The proposed rules would repeal and reformat the existing version of Chapter 117 to provide greater clarity and ease of use, provide space for future rulemaking activities, and retain current one-hour ozone rules for all ozone attainment and nonattainment areas of the state. The proposed rules also provide for the Dallas-Fort Worth eight-hour ozone attainment demonstration as required by EPA and propose to reduce NO_x emissions from certain sources in northeast Texas. Finally, the proposed rules would also implement provisions of HB 965, 79th Legislature, 2005.

The proposed rules apply to many areas and sources of NO_x in Texas and are intended to become part of the SIP. Some of the proposed rules may have significant fiscal implications for some governmental entities and industry in the Dallas-Fort Worth eight-hour ozone nonattainment area. This area includes nine counties, specifically Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant. Certain northeast Texas counties would also be affected by parts of the proposed rules that would reduce NO_x emissions from stationary, gas-fired reciprocating, internal combustion engines. These counties are Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Franklin, Freestone, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood. These proposed rules can be found in: Subchapter B, Division 4; Subchapter C, Division 4; Subchapter D, Division 2; and Subchapter E, Divisions 2, 3, and 4.

The fiscal implications of the proposed rules for governmental entities are summarized as follows:

CHAPTER 117 REFORMAT

The reformatting under the proposed rules should make it easier for affected owners or operators in all designated nonattainment areas (Houston-Galveston-Brazoria, Beaumont-Port Arthur, and Dallas-Fort Worth) to find rules that apply specifically to their respective areas. Any minor clarifications and corrections under the proposed rules are not anticipated to have any fiscal implications for any governmental entities or industry. One proposed change would allow an additional option for providing substitute data to the agency when NO_x monitors are down. Owners or operators of major sources of NO_x in the Houston-Galveston-Brazoria nonattainment area that voluntarily choose this option may have to pay for reprogramming of their emission monitoring system and data acquisition and handling system. Costs of this possible reprogramming are dependent on a number of variables unique to the owner/operator. As such, staff cannot estimate the cost of this voluntary option, although it is not anticipated to be significant.

SUBCHAPTER B, DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

This section of the proposed rules would require owners/operators of major sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to reduce NO_x emissions by March 1, 2009, from industrial, commercial, or institutional (ICI) boilers and gas turbines; duct burners used in turbine exhaust ducts; process heaters and furnaces; stationary internal combustion engines; brick, ceramic and lime kilns; metallurgical heat treating and reheat furnaces; electric arc furnaces used in steel production; lead smelting blast (cupola) and reverberatory furnaces; glass melting furnaces, fiberglass and mineral wool fiber melting furnaces, fiberglass and wool fiber curing and forming ovens; heaters and ovens, and dryers used in organic solvent, printing ink, and ceramic tile, clay, and brick drying, and calcining and vitrifying; and incinerators. The proposed emission specifications for these source categories are consistent with current emission specifications effective in the Houston-Galveston-Brazoria ozone nonattainment area.

Governmental entities that own or operate the previously mentioned units would experience fiscal implications, some of which may be significant, under the proposed rules. Most fiscal implications for governmental entities would result from the proposed rules for major sources of NO_x emissions as well as proposed rules for minor sources of NO_x emissions.

As many as five ICI boilers and one dual-fuel engine at two state-supported medical centers; eight boilers at three federal institutions; and one boiler and two dual-fuel engines at two local governments may be required to implement emission controls under the proposed rules for major NO_x sources. Estimates for capital costs, CEMS, compliance testing, and fuel meters could be as much as $3.3 million for state medical centers in the Dallas-Fort Worth eight-hour ozone nonattainment area to retrofit five ICI boilers and one dual-fuel engine in the first year the proposed rules are in effect. Federal entities could spend as much as $704,000 for eight boilers, and local governments could spend as much as $1 million to retrofit one ICI boiler and two dual-fuel engines. Costs to retrofit major NO_x sources owned by governmental entities could total $5 million area wide. Annual costs for all governmental entities in the area are estimated to be $2.9 million. Cost-effectiveness for the proposed emission reduction is approximately $3,800 to $5,700 per ton of NO_x reduced.

The cost estimates that follow are used to project the fiscal implications of controls and other required monitoring and testing for both governmental and industrial major and minor NO_x sources in the Dallas-Fort Worth eight-hour ozone nonattainment area.

Capital costs for emission controls vary depending on the size of the unit and the control technology selected. Emission control options for ICI boilers could include installation of SCR and low-NO_x burners. Emission control options for rich-burn engines could include NSCR and secondary catalyst retrofits. Emission control options for lean-burn engines could include installation of EGR kits combined with the use of NSCR or installation of SCR. Emission controls for dual-fuel engines would probably require SCR installation.

Estimates for SCR installation costs for boilers range from $4,000 to $6,000 per MMBtu/hr, and low-NO_x burner installation costs for boilers are approximately $3,100 per MMBtu/hr.

Annual costs are estimated to be $700 per MMBtu/hr for SCR controls and $600 per MMBtu/hr for low-NO_x burners.

Installation of NSCR to meet the 0.50 g/hp-hr standard of the proposed rules for rich-burn engines is estimated to cost $16,667 plus $16.67 per hp of the engine. Cost of a secondary catalyst, if needed, is approximately $15 per hp. For lean-burn engines, installation of an EGR kit plus NSCR can cost $39,167 plus $41.67 per hp, plus an additional $15 per hp if a secondary NSCR catalyst is required. If SCR is required to meet the proposed emission limits for lean-burn engines, installation can cost $310,000 plus $72.70 per hp. Annual costs for NSCR and secondary catalyst would be approximately $2,600 plus $11 per hp for NSCR and $5.00 per hp for the catalyst for either rich-burn or lean-burn engines. Annual costs for SCR would be approximately $37,300 plus $16.30 per hp. Installation of SCR for dual-fuel engines is estimated to cost $187,000 plus $98 per hp. The annual costs for SCR installed on a dual-fuel engine would be the same as annual costs associated with SCR installed on a lean-burn engine.

Installation of emission controls could also require installation of CEMS equipment, periodic testing, quarterly testing, and fuel meter installation. Capital costs for installation of CEMS are estimated to be $148,300 per unit. Fuel meters are estimated to cost $2,500 per meter, and initial compliance tests are estimated to cost $3,500. Quarterly tests are estimated to cost $100 per test.

SUBCHAPTER C, DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

Governmental entities that own or operate utility boilers, auxiliary steam boilers, and stationary gas turbines at electric generating facilities (EGFs) would be required to limit NO_x emissions to the appropriate emission specifications for each unit type under the proposed rules. Governmental entities owning or operating EGFs may already be in compliance with the proposed emission specifications, have the capability to meet the specifications with existing control technologies, or could utilize a megawatt-hour output based efficiency option to calculate emission rates to comply with the proposed rules. If a governmental entity chooses to utilize an efficiency option to comply with the proposed rules, it may have to alter its general operating practices to favor more efficient units during applicable operating conditions. Costs to alter operating procedures for this option are not anticipated to be significant because they may be offset by savings generated by greater efficiencies, but any costs or savings would depend on the conditions found at each facility and cannot be quantified by staff. Therefore, this part of the proposed rules is not anticipated to have significant fiscal implications for governmental entities.

SUBCHAPTER D, DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

Current rules do not require owner/operators of minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to control emissions. The proposed rules would require installation of control technology or combustion modifications on these minor sources. In effect, the proposed rules require that minor sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area comply with the same requirements as minor sources of NO_x in the Houston-Galveston-Brazoria ozone non attainment area. Affected owner/operators would also be required to comply with monitoring, recordkeeping, and reporting requirements. There may be as many as 1,057 boilers and 207 stationary internal combustion engines in the Dallas-Fort Worth eight-hour ozone nonattainment area that may be required to comply with the proposed rules by March 1, 2009. Owner/operators of boilers may have to install low-NO_x burners, and owner/operators of stationary internal combustion engines would either have to install emission controls or modify combustion methods to satisfy the requirements of the proposed rules.

Approximately 147 boilers that belong to independent school districts would be required to install low-NO_x burners. This is estimated to cost approximately $2.6 million for the burners and $441,000 for testing. Approximately 200 minor source boilers are owned by other city, county, and state governmental entities, 43 of which may be required to install low-NO_x burners. Total capital cost for the burners is estimated to be $994,000, and testing costs are estimated to cost $129,000. The remaining 157 boilers owned by other governmental entities would be required to install fuel meters on low fuel usage boilers to demonstrate that they are exempt from the requirements of the proposed rules for minor NO_x sources. Costs for fuel meters on 157 boilers are estimated to be $392,500. Total costs for all governmental entities owning minor source boilers could be as much as $4.6 million for the first five years the proposed rules are in effect. Annual costs for low-NO_x burners are estimated to be $600 per year per MMBtu/hr. Cost-effectiveness for the proposed emission reduction from minor sources is approximately $5,050 per ton of NO_x reduced.

SUBCHAPTER E, DIVISION 2: CEMENT KILNS

The proposed rules would require owners/operators of cement kilns in the Dallas-Fort Worth ozone nonattainment area to reduce NO_x emissions. There are ten cement kilns that might be required to install SNCR systems to comply with the proposed emission limits. No fiscal implications are anticipated for governmental entities as a result of this requirement because none of these kilns are owned or operated by them.

SUBCHAPTER E, DIVISION 3: WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

The proposed rule would repeal current rules that require water heaters, small boilers, and process heaters throughout the state to meet specific NO_x emission limits. These rules were part of a SIP implementation strategy for attainment of ozone NAAQS. However, HB 965, 79th Legislature, 2005, required the agency to study the economic feasibility of regulating residential water heaters. Based on the study and comments received, the commission is proposing to repeal the 10 ng/J NO_x emissions standard for Type 0 water heaters and retain the current 40 ng/J NO_x emission standard. No fiscal implications are anticipated for governmental entities because the compliance date for the current rule has not yet been reached.

SUBCHAPTER E, DIVISION 4: EAST TEXAS COMBUSTION

The proposed rules would require owners/operators in 39 northeast Texas counties to limit NO_x emissions from stationary, gas-fired reciprocating, internal combustion engines. Approximately 854 of the 985 engines impacted by the proposed rules would need to make engine modifications or install controls to limit NO_x emissions. No local governments were identified as owners/operators of the engines expected to be affected by the proposed rules. If governmental entities in this region do own/operate such engines, they would incur the same costs as those incurred by business entities.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be greater ease and efficiency in the application of agency rules and improved air quality and health in the Dallas-Fort Worth nine-county eight-hour ozone nonattainment area due to lower ozone levels. It is estimated that the proposed rules would reduce the amount of NO_x in the affected areas by 68 tons per day. Lowering the level of ozone would benefit the public by enhancing the protection of public health and the environment.

Cost estimates that follow for major and minor NO_x sources are the same as those used to analyze total control, CEMS, annual operating, fuel meter, and testing costs for government al entities. Total capital, testing, and fuel meter costs for complying with all sections of the proposed rules in all the affected areas of the state could range from $255 million to $350.6 million for the first five years the rules are in effect.

SUBCHAPTER B, DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

The proposed rules would require industrial owners/operators of major sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to control emissions. There would be fiscal implications for industrial entities required to install controls or modify operations. Fiscal implications could be significant depending on the type of emission source, the size of the source, and the type of emission control technology chosen by the affected business. Cost-effectiveness for the proposed emission reduction is estimated to be between $3,800 and $5,700 per ton of NO_x reduced. Total capital, testing, and fuel meter costs to comply with this division of the proposed rules are estimated to range from $66 million to $82 million.

An estimated 50 out of 254 ICI boilers owned/operated by industry are anticipated to require installation of SCR. CEMS installation would also be required for 13 of the 50 heaters. The remaining 204 ICI boilers owned/operated by industry would require low-NO_x burners to meet emission specifications. Capital costs for SCR, capital costs for required CEMS, capital costs for low-NO_x burners, costs for fuel meters as needed, and costs for compliance testing could total as much as $29 million for all affected ICI boilers in the area for the first five years the rules are in effect. Estimates for annual costs for CEMS total $715,500. Annual costs for SCR and low-NO_x burners are estimated to be $4 million.

Approximately 55 process heaters; 116 natural gas heaters, dryers, and ovens; 22 brick and ceramic kilns; and four stationary gas turbines owned/operated by businesses are expected to install low-NO_x burners to comply with the proposed rules. The low-NO_x burners required for the 55 process heaters larger than 2 MMBtu/hr in the Dallas-Fort Worth eight-hour ozone nonattainment area are expected to cost $3,280 per MMBtu/hr for a total capital cost of $1.3 million, and associated annual costs are expected to be $219,000. Capital costs for low-NO_x burner installation for the 116 natural gas-fired heaters, dryers, and ovens are estimated to be $4.3 million. Annual costs are estimated at $739,000. It is expected that CEMS installation, costing $148,300 would be required at one of these units with annual costs estimated to be $48,000. For the 22 brick and ceramic kilns in the area, capital costs may be as much as $3.5 million, and annual costs may total $1.6 million. Capital costs to install low-NO_x burners for the four stationary gas turbines in the area are estimated to be $400,000 per unit, for an area-wide total of $1.6 million. Annual costs for low-NO_x burners installed at these turbines are estimated to total $210,000. Fuel metering costs for process heaters, natural gas heaters, dryers, and ovens, brick and ceramic kilns, and gas turbines are approximately $2,500 per meter for a combined total cost of $490,000 for all units. Initial compliance testing, estimated to cost $3,500 per control, for these units totals $609,000. All capital, monitoring, and testing costs for these units are estimated to total $11.9 million.

Oxy-fuel firing retrofits are expected to be needed at 11 glass and fiberglass melting furnaces in the area. In addition, there are 20 curing ovens for glass and fiberglass activities in the area. The retrofits for fiberglass producing furnaces may cost from $1.9 million to $5.07 million per plant and $9.8 million per plant for glass melting facilities. Total capital costs for all furnace retrofits are estimated to range from $13.7 million to $16.8 million. Annual costs associated with these retrofits are estimated to range from $706,000 to $4.1 million per plant. Installation of low-NO_x burners at the 20 curing ovens is estimated to cost $1.3 million. Annual costs for low-NO_x burners at the 20 curing ovens are estimated to be $220,000. Initial compliance testing for all 31 furnaces and ovens is estimated to cost $108,500, and total costs for required fuel meters are approximately $77,500. Total capital, testing, and fuel meter cost estimates for these units range from $15 million to $18 million.

The proposed rules would also require an estimated ten steel reheat/heat treat furnaces to install low-NO_x burners and two lead smelting furnaces to install low-NO_x burners and FGR to comply with emission specifications. Estimated capital costs for the steel reheat/heat treat furnaces are $1.5 million with annual costs of $287,000. Capital costs to install low-NO_x burners and FGR at the two lead smelting furnaces are estimated to range from $900 to $1,800 per ton of NO_x reduced. Total capital and annual costs for these furnaces cannot be accurately estimated because the control costs are based on EPA estimates for iron and copper smelting furnaces and actual reductions for this technology as applied to lead are unknown. Annual costs associated with control technologies are estimated to total $287,000. Installation of CEMS and associated CEMS annual costs are approximately $445,000 and $143,000, respectively. Required fuel meters are anticipated to cost $45,000 for all ten furnaces, and required initial compliance tests are projected to cost $52,500. Total capital, fuel meters, and testing are estimated at $2 million.

As many as 15 rich-burn and 32 lean-burn engines at major industrial NO_x sources in the Dallas-Fort Worth eight-hour ozone nonattainment area would require retrofit to comply with proposed emission standards. Based on the control costs discussed previously, capital costs associated with NSCR and secondary catalyst retrofits for 15 rich burn engines are estimated to be $635,439 with annual costs of $233,720. Capital costs associated with EGR with NSCR and secondary catalyst for all 32 lean-burn engines could total $2.1 million with associated annual costs projected to be $280,375. If SCR is installed for all 32 lean-burn engines, capital costs could be as high as $11.2 million for SCR plus $4.7 million in capital costs for any required CEMS controls. Annual costs for SCR and CEMS on 32 lean-burn engines are approximately $5.2 million and $1.5 million, respectively. Fuel meters, expected to be required for all engines that are not exempt, are estimated to total $125,000. All engines would be required to conduct initial and periodic compliance tests as well as quarterly tests. For all 47 engines,

initial and periodic compliance tests are required along with three quarterly checks. These are estimated to cost $190,000 in the first year and every other year. Quarterly checks, required for years where periodic testing is not required, is estimated to cost $20,000 per year for all 47 engines. For the first five years the proposed rules are in effect, testing costs for these engines could total $570,000 in years one, three, and five and $40,000 for years two and four. Total testing costs for the first five years the rules are in effect are estimated to be $610,000. All capital, fuel meter, and testing costs for five years for these engine types could range from $3.4 million to $17 million depending on the control used for lean-burn engines.

As many as three incinerators would probably require installation of SCR and fuel meters. The capital costs for these controls at the three units are estimated at $3.6 million for SCR and $7,500 for fuel meters. Annual costs associated with SCR controls may be as much as $816,000. One of the three incinerators may also require CEMS installation at an estimated cost of $148,300 and associated annual costs projected at $47,700. Costs for initial compliance testing for all three incinerators are estimated at $7,000. Total capital, fuel meter, and testing costs are estimated to be $3.89 million.

Four lime kilns would require installation of CEMS for monitoring, if the kilns are not already equipped with CEMS. Capital costs for CEMS at the four kilns are estimated to be $593,200. Associated annual costs for CEMS at the four kilns are projected at $190,800. Fuel meters are expected to be required at the four kilns and are estimated to cost $10,000. All capital, CEMS, and fuel meter costs for these kilns are estimated to total $603,200.

The stationary diesel engines at major sources in the Dallas-Fort Worth eight-hour ozone nonattainment area are anticipated to be exempt from retrofit under the proposed rules because these engines are expected to be emergency back-up generators. If these engines become subject to the proposed rules, it would probably be more expensive to retrofit them with controls than to buy a new engine, which must meet EPA tier standards. If required to purchase a new engine, owners/operators could pay as much as $2,000 to $10,000 more than they would pay for an older diesel engine. Because it is not known how many of these engines could lose exemption under the proposed rules, staff cannot estimate area-wide costs of engine replacement.

SUBCHAPTER C, DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

Businesses that own or operate utility boilers, auxiliary steam boilers, and stationary gas turbines at EGFs would be required to limit NO_x emissions to the appropriate emission specifications for each unit type under the proposed rules.

As many as four EGFs in the Dallas-Fort Worth nonattainment area are anticipated to be required to install SCR to meet proposed emission specifications. The installation of an SCR is estimated to cost of $125,000 per MW capacity. The total cost of installing an SCR would depend on the capacity of each of the four EGFs anticipated to need an SCR control, but estimates for area-wide capital costs could be as much as $87.5 million. In addition to capital costs, an EGF would also incur annual costs. The amount of these annual costs would depend on a number of factors including the capacity of the EGF and the ability to use available efficiency options to manage daily operations. Based on a concept of annual costs utilized by EPA, staff has estimated that these costs, area wide, could be as much as $5.45 million per year.

SUBCHAPTER D, DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

The proposed rules regarding minor NO_x emission sources in the Dallas-Fort Worth eight-hour ozone nonattainment area may require owners/operators of certain boilers, stationary internal combustion engines, gas turbines, and process heaters to limit emissions. If required to control emissions, owners/operators would incur control implementation costs as well as testing costs. Minor source boilers and internal combustion engines would be most affected by the proposed rules. The following cost detail is based on the same costs used in the cost analysis for major NO_x sources.

An estimated 867 boilers and 207 stationary internal combustion engines owned by businesses in the affected area would be subject to testing requirements. Total one-time initial testing costs for all 867 boilers is estimated to be $2.6 million. The estimated 207 engines would also be required to perform initial and periodic compliance tests as well as quarterly checks. For the first year and every other year, testing costs for all 207 engines could be as much as $683,100. For the second and fourth years, quarterly tests are estimated to be $82,800. For the first five years the rule is in effect, testing costs for engines are estimated to be $2.2 million. Combined area-wide testing costs for minor sources of NO_x is estimated to be $4.8 million for the first five years the proposed rules are in effect.

Owners or operators of process heaters and stationary diesel engines qualifying as minor sources are not expected to experience any fiscal implications for emission controls. Either their low emission levels or their use as emergency back-up generators are expected to comply with the proposed rules exemption definitions. If these heaters and engines fail to comply with the exemption specifications, owners/operators could incur costs to retrofit or buy new equipment.

Owners or operators of boilers and stationary gas-fired (rich-burn and lean-burn) engines that are classified as minor sources of NO_x may experience significant fiscal implications under the proposed rules if they are required to retrofit equipment, make combustion modifications, or install totalizing fuel flow meters.

There may be as many as 923 boilers owned by industry that would be exempt from the proposed rule due to low fuel usage. These boilers would be required to install fuel meters to demonstrate that they qualify for exemption from the proposed rules. Using a cost per fuel meter of $2,500, total fuel meter costs for these exempt boilers would total $2.3 million.

As many as 867 boilers in the Dallas-Fort Worth area may have to be retrofitted with low-NO_x burners. For all 867 boilers requiring retrofit, low-NO_x burner costs could be as much as $26 million, and associated annual costs could be as much as $600 per MMBtu/hr. Over the first five years the rules are in effect, total capital, testing, and fuel meter costs to retrofit minor source burners are estimated to be $33 million.

Under the proposed rules, approximately 207 stationary gas fired engines, of which 146 are rich-burn and 61 are lean-burn, would be required to install emission controls or make combustion modifications to comply with emission specifications. Required emission controls are likely to be NSCR with a secondary catalyst, a SCR, or an EGR kit.

Rich-burn engines would likely require installation of NSCR and secondary catalyst to meet the 0.50 g/hp-hr standard. An estimated 90 of the 146 rich-burn engines are expected to already have primary catalyst modules installed and would only need a secondary catalyst to complete the needed retrofit. For all 90 engines, secondary catalyst costs are estimated to total $202,500. Approximately 56 of the 146 rich-burn engines would need to install NSCR and a secondary catalyst. Installation of NSCR and a secondary catalyst for all 56 rich-burn engines totals approximately $1.26 million. In addition to NSCR and catalyst costs, owners or operators of these 146 rich-burn engines would incur annual operating costs estimated to total $377,000.

Installation of an EGR kit combined with NSCR or installation of SCR is expected to be required for 61 lean-burn engines to meet the 0.50 g/hp-hr standard of the proposed rules. Total capital costs for all 61 lean-burn engines, if installation of EGR and NSCR is chosen, are estimated to be $3.9 million with annual costs totaling $595,000 per year. Total capital costs for all 61 lean-burn engines, if SCR controls are used, could be as much as $20.9 million with annual costs of $9.6 million.

For the first five years the proposed rules are in effect, capital, monitoring, and testing costs for all affected boilers and engines at minor sources of NO_x emissions in the Dallas-Fort Worth eight-hour ozone nonattainment area could range from $38 million to $55 million depending on the control technology selected for lean-burn engines. Overall cost-effectiveness for controls on minor sources is estimated to range from $5,050 to $10,500 per ton of NO_x removed.

SUBCHAPTER E, DIVISION 2: CEMENT KILNS

The proposed rules would require owners or operators of cement kilns in the Dallas-Fort Worth ozone nonattainment area to reduce NO_x emissions. There are ten cement kilns, seven wet and three dry, that may be required to install SNCR systems to comply with the proposed emission limits. For wet kilns, capital costs are estimated to range from $1.2 million to $1.4 million for the installation of one SNCR system. Annual costs per system, which include costs for operation and maintenance, electricity, ammonia and/or urea, steam, overhead, taxes, insurance, administration, and capital recovery, could be as much as $300,000 to $500,000. Area-wide capital costs for all wet kilns may be as much as $8.4 million to $9.8 million. For dry kilns, capital costs for one SCR installation are estimated to be $2.3 million with annual costs of approximately $1 million. For all dry kilns, area-wide costs are estimated to be $6.9 million. The proposed rules would also require kiln owners or operators to incur additional monitoring costs upon the installation of SCR controls. Monitoring equipment is anticipated to cost $83,800 per unit, and annual costs per monitoring unit are estimated to be $19,000. Area-wide monitoring costs would total $838,000 for the ten kilns. Total capital costs for controls and monitoring equipment for all kilns are estimated to range from $16 million to $17.5 million. Overall cost-effectiveness is estimated to be $2,196 per ton of NO_x removed.

SUBCHAPTER E, DIVISION 3: WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

Under current rules affecting water heaters, small boilers, and process heaters, those subject to the rules have not yet reached the deadline associated with meeting the 10 ng/J emission standard. Because of the repeal of this emissions limit under these proposed rules, persons subject to the rules would be able to continue manufacturing and selling water heaters that meet the 40 ng/J standard. Therefore, this part of the proposed rules would have no fiscal implication for the residential water heater industry.

SUBCHAPTER E, DIVISION 4: EAST TEXAS COMBUSTION

Owners or operators of stationary, gas-fired reciprocating, internal combustion engines equal to or greater than 50 hp in 39 northeast Texas counties would be required to limit NO_x emissions under the proposed rules. Approximately 854 of the estimated 985 engines in this area would need to make engine modifications or install controls to limit NO_x emissions.

All affected engines in the affected counties, whether they are required to limit emission controls or not, would be subject to testing requirements. Initial tests would cost approximately $3,000. Periodic tests, which must be performed every other year, are expected to cost the same. In addition, quarterly tests would be required to be conducted for three quarters in the first, third, and fifth years. Initial, periodic, and quarterly testing costs are estimated to be $3.25 million for the first, third, and fifth years. In the second and fourth years only, quarterly tests would be required. These quarterly tests are estimated to cost $100 each. Annual testing costs in the second and fourth years are estimated to be $394,000 per year. Total testing costs for the first five years the proposed rules are in affect are estimated to be $10.5 million.

Approximately 854 engines in northeast Texas would be required to install emission controls or make combustion modifications to meet the emission specifications of the proposed rules. Costs to install emission controls or make combustion modifications would vary depending on engine type (rich-burn or lean-burn) and size.

Approximately 557 rich-burn engines in northeast Texas would be required to install NSCR systems to meet the proposed 1.0 g/hp-hr standard for engines less than 500 hp or the 0.50 g/hp-hr standard for engines of 500 hp and greater. With the installation of NSCR, an additional catalyst module would also be required. The cost of an NSCR package is estimated to be $16,667 plus $16.67 per hp of the engine. A catalyst module required for NSCR installation, regardless of engine size, is estimated to cost $15 per hp. Total costs for NSCR installation plus additional catalyst for a 500 hp rich-burn engine could be as much as $33,000. For the 39-county region, total first-year capital costs for NSCR retrofits on rich-burn engines could total $16.8 million.

Approximately 297 lean-burn engines in northeast Texas would be required to retrofit those engines by installing an EGR kit combined with NSCR or by making LEC modifications. In general, costs for retrofitting engines using EGR combined with NSCR are lower than costs for LEC, but some engines might not be able to use an EGR kit and thus choose LEC. In some cases LEC may equal or exceed the cost of buying a new engine. There would also be annual recurring costs for both options. The capital cost of an EGR kit combined with NSCR is estimated to be $39,167 plus $41.67 per hp of the engine. LEC costs are estimated to be $226,000 plus $66.80 per hp. Annual recurring costs for EGR with NSCR are estimated to range from $23,000 to $56,000. For LEC, annual costs are estimated to be $57,800 plus $14.60 per hp. Total areas-wide costs are dependent on how many engines are retrofitted using the EGR/NSCR control approach and how many are controlled by LEC. If all lean-burn engines in the northeast Texas area utilize EGR/NSCR, capital costs alone could be as much as $20.5 million. If LEC is used area wide, total capital costs are estimated to be as much as $81.3 million.

Capital and testing costs for both rich-burn and lean-burn engines could range from $47.8 million to $108.6 million depending on the engine and the control technology chosen. Cost-effectiveness for the proposed emission reduction is approximately $1,980 per ton of NO_x reduced.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses in the Dallas-Fort Worth eight-hour ozone nonattainment area and northeast Texas if they own sources of NO_x that would be regulated by the proposed rules. Staff is not able to determine the number of small or micro-businesses in the affected area, but dry cleaners or small hotels may be required to control emissions of small boilers by installing low-NO_x burners on a boiler averaging 5 MMBtu/hr. Costs to install low-NO_x burners on a boiler this size are estimated to be $15,500 with annual costs of $600 per MMBtu/hr. A small business is defined as having fewer than 100 employees and less than $1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees. If a small or micro-business has a small boiler and installs a low-NO_x burner to meet the requirements of the proposed rules, the cost per employee for a small business is estimated to be $161 during the first year the proposed rules are implemented and $6.00 per employee in the second through fifth years. For a micro-business, the cost is estimated to be $805 per employee during the first year of implementation and $30 per employee in the second through fifth years.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking for a new Chapter 117 in 30 TAC in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that, except for the proposed repeal and reformatting of Chapter 117 and as specifically discussed later regarding proposed rules in Subchapter E, Division 3, the proposed rulemaking meets the definition of a major environmental rule as defined in that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed repeal and reformatting of Chapter 117 is necessary to accommodate new proposed rules for the eight-hour ozone attainment demonstration and to provide for future potential rulemaking. The reformatting includes proposed minor technical changes and corrections to existing language for rule language associated with the one-hour ozone NAAQS. The repeal and reformatting of Chapter 117, if adopted, will not negatively impact the status of the state's attainment with the ozone NAAQS because all existing rules remain in effect until the effective date of the proposed reformatted chapter. All requirements in the existing rules for the one-hour ozone NAAQS, applicable to a particular region or area that the rules apply to, have been incorporated into the proposed new formatted rules. This is necessary so there will be no backsliding or temporary lapse in the enforcement or effectiveness of the current requirements in 30 TAC Chapter 117.

The proposed rulemaking does not, however, meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

Specifically, the remainder of this rulemaking can be summarized as indicated in the following categories.

SUBCHAPTER B: COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

These rules propose new emission control requirements for major ICI sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. These rules are a part of the area's attainment demonstration and the emission reductions associated with this rulemaking will help bring the area into compliance with the eight-hour ozone NAAQS.

Specifically, the proposed new Subchapter B, Division 4 would require owners or operators of major ICI sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to reduce NO_x emissions from a wide variety of stationary sources. The proposed rules also include monitoring, testing, recordkeeping, reporting, and other requirements associated with the proposed emission specifications necessary to ensure compliance with the emission specifications and that the necessary NO_x emission reductions will be achieved.

Further, the emission specifications for attainment demonstration in proposed new §117.410 specify stricter emission limits for NO_x for all unit and industry types in the Dallas-Fort Worth eight-hour nonattainment area that are specified in the EPA's Alternative Controls Techniques (ACT). The FCAA RACT requirement would be fulfilled by the emission specifications for attainment demonstration proposed in §117.410 for the Dallas-Fort Worth eight-hour ozone nonattainment area.

If these rules are adopted, the emission reductions will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter B, Division 4 are one step toward meeting the state's obligations under the FCAA.

SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

These rules propose new requirements for utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. These rules are a part of the area's attainment demonstration and the emission reductions associated with this rulemaking will help bring the area into compliance with the eight-hour ozone NAAQS.

Specifically, the proposed new Subchapter C, Division 4 would apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system owned or operated by a municipality or a PUC-regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or an electric cooperative, independent power producer, municipality, river authority, or public utility located within the Dallas-Fort Worth eight-hour ozone nonattainment area. The proposed rules establish a unit-by-unit, or command and control-based system for compliance with the existing emission specifications for units subject to the proposed rule. Further, as discussed elsewhere in this preamble, the rules satisfy RACT requirements for the five new counties in the nine-county Dallas-Fort Worth eight-hour ozone nonattainment area.

If these rules are adopted, the emission reductions will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter C, Division 4 are one step toward meeting the state's obligations under the FCAA.

SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

These rules propose requirements for minor stationary sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to meet new emission specifications and other reductions of NO_x emissions from affected boilers, process heaters, stationary internal combustion engines, and gas turbines (including duct burners). This proposed rulemaking would regulate units at sites including small businesses and industries, hospitals, hotels, public and private office and administrative buildings, and school districts that were previously unregulated.

If these rules are adopted, the emission reductions will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter D, Division 2 are one step toward meeting the state's obligations under the FCAA.

SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL

DIVISION 2: CEMENT KILNS

These rules implement a proposed control strategy for cement kilns in the Dallas-Fort Worth eight-hour ozone nonattainment area. Specifically, the commission is proposing a source-cap approach to establish a maximum NO_x emission cap for each account. As discussed elsewhere in this preamble, these rules are based on the commission's evaluation of the "Assessment of NO_x Emissions Reduction Strategies for Cement Kilns--Ellis County: Final Report," together with modeling sensitivity studies, and all other available information. A source cap allows an owner or operator to choose the most applicable and cost-effective control technology available to a particular kiln while still achieving the overall reductions modeled for the Dallas-Fort Worth eight-hour attainment demonstration. Owners or operators may use any of the control technologies identified in the final report of the control technology study to achieve reductions for compliance with the source cap. Before an increase in NO_x emissions from a change in operation from one unit or the installation of a new kiln could occur, a corresponding and equivalent decrease in NO_x emission would be required from another existing unit.

If these rules are adopted, the emission reductions will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter E, Division 2 are one step toward meeting the state's obligations under the FCAA.

DIVISION 4: EAST TEXAS COMBUSTION

The primary purpose of the proposed new rules is to require affected gas-fired stationary, reciprocating internal combustion engines in certain counties in the northeast Texas area to meet new NO_x emission specifications and other requirements in order to reduce NO_x emissions and ozone air pollution transport into the Dallas-Fort Worth eight-hour ozone nonattainment area. The specific counties included in the applicability for this proposed rulemaking include the following counties: Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Franklin, Freestone, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood Counties.

If these rules are adopted, the emission reductions will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter E, Division 4 are one step toward meeting the state's obligations under the FCAA.

ANALYSIS

The proposed new Chapter 117 rulemaking would implement requirements of the FCAA. Under 42 USC, §7410, each state is required to adopt and implement a state implementation plan containing adequate provisions to implement, attain, maintain, and enforce the NAAQS within the state. While 42 USC, §7410

generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs must include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter," (meaning Chapter 85, Air Pollution Prevention and Control, otherwise known as the Federal Clean Air Act). The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and must develop programs to assure that their state implementation plans provide for implementation, attainment, maintenance, and enforcement of the NAAQS within the state.

The requirement to provide a fiscal analysis of proposed regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted proposed rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states must develop programs for each nonattainment area to help ensure that those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule proposed for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full RIA contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes that the intent of SB 633 was only to require the full RIA for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp,* 919 S.W.2d 485, 489 (Tex. App. Austin 1995), *writ denied with per curiam opinion respecting another issue,* 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.,* 798 S.W.2d 353, 357 (Tex. App. Austin 1990, *no writ). Cf. Humble Oil & Refining Co. v. Calvert,* 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.,* 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor,* 24 S.W.3d 581 (Tex. App. Austin 2000, *pet. denied);* and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.,* 563 S.W.2d 916 (Tex. 1978).

The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance." (Texas Government Code, §2001.035.) The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of §2001.0225.

The specific intent of the proposed rules is to protect the environment and to reduce risks to human health, particularly in the state's ozone nonattainment areas, by adoption of the proposed new rules in Chapter 117. The proposed rules do not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in Texas Health and Safety Code (THSC), §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because, although the proposed rule meets the definition of a major environmental rule, it does not meet any of the four applicability criteria for a major environmental rule.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL

DIVISION 3, WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

The commission reviewed the proposed rulemaking action in Subchapter E, Division 3 of Chapter 117 in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking action does not meet the definition of a major environmental rule as defined in that statute. A major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the

environment, or the public health and safety of the state or a sector of the state.

The primary purpose of this proposed rulemaking action in this division is to repeal the current 10 ng/J NO_x emission standard for certain gas-fired residential water heaters, as set forth in §117.465(b)(2). This emission standard has never become effective. The effective date has been extended through a prior adopted rulemaking, and it has subsequently been determined that compliance with the 10 ng/J standard for Type 0 units is not currently achievable. The basis for this determination is discussed earlier in this preamble in greater detail. All water heaters must still meet the 40 ng/J emission standard in the existing rules. The original rules, adopted on April 19, 2000, did not constitute a major environmental rulemaking action, and the proposed amendments to the existing rules are minor in nature. Therefore, the proposed rulemaking does not constitute a major environmental rule, and thus not subject to a formal regulatory analysis.

If these rules are adopted, emission reductions from the remaining emission standards in the rules will result in reductions in ozone formation in the Dallas-Fort Worth eight-hour ozone nonattainment area, and help bring the area into compliance with the eight-hour ozone NAAQS. These emission reductions are one component of the Dallas-Fort Worth attainment demonstration SIP revision the state is required to submit to EPA to assure attainment and maintenance of the eight-hour ozone NAAQS, and the proposed new rules in Subchapter E, Division 3 are one step toward meeting the state's obligations under the FCAA.

In addition, this proposed rulemaking does not meet any of the four applicability criteria of a major environmental rule as defined in the Texas Government Code. Texas Government Code, §2001.0225 applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking action, which repeals the current 10 ng/J NO_x emission standard for certain gas-fired residential water heaters does not exceed a federal requirement, and is required under recently passed state legislation. Furthermore, there is no contract or delegation agreement that covers the topic that is the subject of this action. Finally, this rulemaking action was not developed solely under the general powers of the agency, but is authorized by specific sections of Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble, including Texas Health and Safety Code, §§382.011, 382.012, and 382.017. Therefore, the proposed rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, nor is adopted solely under the general powers of the agency.

Based upon the foregoing, this rulemaking action is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking action is summarized in the following paragraphs.

CHAPTER 117 REFORMAT

The proposed repeal and reformatting of Chapter 117 is necessary to accommodate new proposed rules for the eight-hour ozone attainment demonstration and to provide for future potential rulemaking. The proposed reformatted Chapter 117 would also provide for easier understanding of what rules are applicable in different geographical areas of the state. The reformatting includes proposed minor technical changes and corrections to existing language for rule language associated with the one-hour ozone NAAQS. The repeal and reformatting of Chapter 117 will not negatively impact the status of the state's attainment with the ozone NAAQS because all existing rules remain in effect until the effective date of the proposed reformatted chapter, if adopted. All requirements in the existing rules for the one-hour ozone NAAQS, applicable to a particular region or area that the rule applies to, have been incorporated into the proposed new formatted rules. This is necessary so there will be no backsliding or temporary lapse in the enforcement or effectiveness of the current requirements in 30 TAC Chapter 117.

SUBCHAPTER B: COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

These rules propose new emission control requirements for major industrial, commercial, or institutional (ICI) sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area. These rules are a part of the area's attainment demonstration and the emission reductions associated with this rulemaking will help bring the area into compliance with the eight-hour ozone NAAQS.

Specifically, the proposed new sections of Subchapter B, Division 4 would require owners or operators of major ICI sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to reduce NO_x emissions from a wide variety of stationary sources. The proposed rules also include monitoring, test-

ing, recordkeeping, reporting, and other requirements associated with the proposed emission specifications necessary to ensure compliance with the emission specifications and that the necessary NO_x emission reductions will be achieved.

Further, the emission specifications for attainment demonstration in proposed new §117.410 specify stricter emission limits for NO_x for all unit and industry types in the Dallas-Fort Worth eight-hour nonattainment area specified in the EPA's Alternative Controls Techniques (ACT). The FCAA RACT requirement would be fulfilled by the emission specifications for attainment demonstration proposed in §117.410 for the Dallas-Fort Worth eight-hour ozone nonattainment area.

SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 4: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

These rules propose new requirements for utility electric generation sources in the Dallas-Fort Worth eight-hour ozone nonattainment area. These rules are a part of the area's attainment demonstration and the emission reductions associated with this rulemaking will help bring the area into compliance with the eight-hour ozone NAAQS.

Specifically, the proposed new Subchapter C, Division 4 would apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system owned or operated by a municipality or a PUC-regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or an electric cooperative, independent power producer, municipality, river authority, or public utility located within the Dallas-Fort Worth eight-hour ozone nonattainment area. The proposed rules establish a unit-by-unit, or command and control based system for compliance with the existing emission specifications for units subject to the proposed rule. Further, as discussed elsewhere in this preamble, the rules satisfy RACT requirements for the five new counties in the nine-county Dallas-Fort Worth eight-hour ozone nonattainment area.

SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 2: DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

These rules propose requirements for minor stationary sources of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area to meet new emission specifications and other reductions of NO_x emissions from affected boilers, process heaters, stationary internal combustion engines, and gas turbines (including duct burners). This proposed rulemaking would regulate units at sites including small businesses and industries, hospitals, hotels, public and private office and administrative buildings, and school districts that were previously unregulated.

SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL

DIVISION 2: CEMENT KILNS

These rules implement a proposed control strategy for cement kilns in the Dallas-Fort Worth eight-hour ozone nonattainment area. Specifically, the commission is proposing a source-cap approach to establish a maximum NO_x emission cap for each account. As discussed elsewhere in this preamble, these rules are based on the commission's evaluation of the "Assessment of NO_x Emissions Reduction Strategies for Cement Kilns--Ellis County: Final Report," together with modeling sensitivity studies, and all other available information. A source cap allows an owner or operator to choose the most applicable and cost-effective control technology available to a particular kiln while still achieving the overall reductions modeled for the Dallas-Fort Worth eight-hour attainment demonstration. Owners or operators may use any of the control technologies identified in the final report of the control technology study to achieve reductions for compliance with the source cap. Before an increase in NO_x emissions from a change in operation from one unit or the installation of a new kiln could occur, a corresponding and equivalent decrease in NO_x emission would be required from another existing unit.

DIVISION 3, WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

The primary purpose of this division is to repeal the current 10 ng/J NO_x emission standard for certain gas-fired residential water heaters, as set forth in §117.465(b)(2). This emission standard has never become effective. The effective date has been extended through prior rulemaking, and it has subsequently been determined that compliance with the 10 ng/J standard for Type 0 units is not currently achievable. The basis for this determination is discussed earlier in this preamble in greater detail. All water heaters must still meet the 40 ng/J emission standard in the existing rules.

DIVISION 4: EAST TEXAS COMBUSTION

The primary purpose of the proposed new rules is to require affected gas-fired stationary, reciprocating internal combustion engines in certain counties in the northeast Texas area to meet new NO_x emission specifications and other requirements in order to reduce NO_x emissions and ozone air pollution transport into the Dallas-Fort Worth eight-hour ozone nonattainment area. The specific counties included in the applicability for this proposed rulemaking include the following counties: Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Franklin, Freestone, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood Counties.

The proposed new Chapter 117 will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq).,* and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the

CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the proposed amendments are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) of protecting and preserving the quality and values of coastal natural resource areas, and the policy in 31 TAC §501.14(q), which requires that the commission protect air quality in coastal areas. The proposed rulemaking and SIP revision would ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. This rulemaking action is consistent with CMP goals and policies, in compliance with 31 TAC §505.22(e).

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Chapter 117 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program. If the proposed new Chapter 117 is adopted, owners or operators subject to the federal operating permit program must, consistent with the revision process in Chapter 122, upon the effective date of the rulemaking, revise their operating permit to include the new Chapter 117 requirements.

ANNOUNCEMENT OF PUBLIC HEARINGS

Public hearings on this proposal will held on January 29, 2007, at 2:00 p.m. and 6:00 p.m. at the Houston-Galveston Area Council, Conference Room A, Suite 120, 3555 Timmons Lane, Houston; January 31, 2007, 7:00 p.m., J. Erik Jonsson Central Library Auditorium, 1515 Young Street, Dallas; February 1, 2007, at 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 1, 2007, at 6:00 p.m., Midlothian Conference Center, 1 Community Circle, Midlothian; February 6, 2007, at 2:00 p.m., Longview Public Library, 222 W. Cotton Street, Longview; and February 8, 2007, at 2:00 p.m., Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building E, Room 201S, Austin. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. Open discussion will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes before the hearings.

Persons who have special communication or other accommodation needs, who are planning to attend the hearings, should contact Jennifer Stifflemire, Air Quality Division, at (512) 239-0573. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/.* All comments should reference Rule Project Number 2006-034-117-EN. The comment period closes February 12, 2007. For further information, please contact Vincent Meiller of the Air Quality Division at (512) 239-6041.

SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeal is proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeal is proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeal is proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeal implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.10. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606703
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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SUBCHAPTER B. COMBUSTION AT MAJOR SOURCES

DIVISION 1. UTILITY ELECTRIC GENERATION IN OZONE NONATTAINMENT AREAS

30 TAC §§117.101, 117.103, 117.105 - 117.111, 117.113 - 117.117, 117.119, 117.121

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.101. Applicability.

§117.103. Exemptions.

§117.105. Emission Specifications for Reasonably Available Control Technology (RACT).

§117.106. Emission Specifications for Attainment Demonstrations.

§117.107. Alternative System-wide Emission Specifications.

§117.108. System Cap.

§117.109. System Cap Flexibility.

§117.110. Change of Ownership - System Cap.

§117.111. Initial Demonstration of Compliance.

§117.113. Continuous Demonstration of Compliance.

§117.114. Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration.

§117.115. Final Control Plan Procedures for Reasonably Available Control Technology.

§117.116. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

§117.117. Revision of Final Control Plan.

§117.119. Notification, Recordkeeping, and Reporting Requirements.

§117.121. Alternative Case Specific Specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606704
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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DIVISION 2. UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL TEXAS

30 TAC §§117.131, 117.133 - 117.135, 117.138, 117.139, 117.141, 117.143, 117.145, 117.147, 117.149, 117.151

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas

Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.131. Applicability.

§117.133. Exemptions.

§117.134. Gas-Fired Steam Generation.

§117.135. Emission Specifications.

§117.138. System Cap.

§117.139. System Cap Flexibility.

§117.141. Initial Demonstration of Compliance.

§117.143. Continuous Demonstration of Compliance.

§117.145. Final Control Plan Procedures.

§117.147. Revision of Final Control Plan.

§117.149. Notification, Recordkeeping, and Reporting Requirements.

§117.151. Alternative Case Specific Specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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DIVISION 3. INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL COMBUSTION SOURCES IN OZONE NONATTAINMENT AREAS

30 TAC §§117.201, 117.203, 117.205 - 117.211, 117.213 - 117.217, 117.219, 117.221, 117.223

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.201. Applicability.

§117.203. Exemptions.

§117.205. Emission Specifications for Reasonably Available Control Technology (RACT)

§117.206. Emission Specifications for Attainment Demonstrations.

§117.207. Alternative Plant-wide Emission Specifications.

§117.208. Operating Requirements.

§117.209. Initial Control Plan Procedures.

§117.210. System Cap.

§117.211. Initial Demonstration of Compliance.

§117.213. Continuous Demonstration of Compliance.

§117.214. Emission Testing and Monitoring for the Houston-Galveston Attainment Demonstration.

§117.215. Final Control Plan Procedures for Reasonably Available Control Technology.

§117.216. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

§117.217. Revision of Final Control Plan.

§117.219. Notification, Recordkeeping, and Reporting Requirements.

§117.221. Alternative Case Specific Specifications.

§117.223. Source Cap.

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DIVISION 4. CEMENT KILNS

30 TAC §§117.260, 117.261, 117.265, 117.273, 117.279, 117.283

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.260. Cement Kiln Definitions.

§117.261. Applicability.

§117.265. Emission Specifications.

§117.273. Continuous Demonstration of Compliance.

§117.279. Notification, Recordkeeping, and Reporting Requirements.

§117.283. Source Cap.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. ACID MANUFACTURING
DIVISION 1. ADIPIC ACID MANUFACTURING

30 TAC §§117.301, 117.305, 117.309, 117.311, 117.313, 117.319, 117.321

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and

Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.301. Applicability.
§117.305. Emission Specifications.
§117.309. Control Plan Procedures.
§117.311. Initial Demonstration of Compliance.
§117.313. Continuous Demonstration of Compliance.
§117.319. Notification, Recordkeeping, and Reporting Requirements.
§117.321. Alternative Case Specific Specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. NITRIC ACID MANUFACTURING--OZONE NONATTAINMENT AREAS

30 TAC §§117.401, 117.405, 117.409, 117.411, 117.413, 117.419, 117.421

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.401. Applicability.
§117.405. Emission Specifications.
§117.409. Control Plan Procedures.
§117.411. Initial Demonstration of Compliance.
§117.413. Continuous Demonstration of Compliance.
§117.419. Notification, Recordkeeping, and Reporting Requirements.
§117.421. Alternative Case Specific Specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. NITRIC ACID MANUFACTURING--GENERAL

30 TAC §§117.451, 117.455, 117.458

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and

duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.451. Applicability.
§117.455. Emission Specifications.
§117.458. Applicability of Federal New Source Performance Standards.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. SMALL COMBUSTION SOURCES
DIVISION 1. WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

30 TAC §§117.460, 117.461, 117.463, 117.465, 117.467, 117.469

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. The repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et. seq.,* that require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state. In addition, the repeals are proposed to implement the legislative mandate under House Bill (HB) 965, 79th Legislature, 2005, which adds Texas Health and Safety Code, §382.0275, concerning Commission Action Relating to Residential Water Heaters, which requires certain actions of the commission regarding residential water heaters.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.0275.

§117.460. Definitions.
§117.461. Applicability.
§117.463. Exemptions.
§117.465. Emission Specifications.
§117.467. Certification Requirements.
§117.469. Notification and Labeling Requirements.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. BOILERS, PROCESS HEATERS, AND STATIONARY ENGINES AND GAS TURBINES AT MINOR SOURCES

30 TAC §§117.471, 117.473, 117.475, 117.478, 117.479, 117.481

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

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The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.471. Applicability.

§117.473. Exemptions.

§117.475. Emission Specifications.

§117.478. Operating Requirements.

§117.479. Monitoring, Recordkeeping, and Reporting Requirements.

§117.481. Alternative Case Specific Specifications.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. ADMINISTRATIVE PROVISIONS

30 TAC §§117.510, 117.512, 117.520, 117.524, 117.530, 117.534, 117.570, 117.571

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the repeals are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the repeals are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed repeals implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.510. Compliance Schedule for Utility Electric Generation in Ozone Nonattainment Areas.

§117.512. Compliance Schedule for Utility Electric Generation in East and Central Texas.

§117.520. Compliance Schedule for Industrial, Commercial, and Institutional Combustion Sources in Ozone Nonattainment Areas.

§117.524. Compliance Schedule for Cement Kilns.

§117.530. Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources.

§117.534. Compliance Schedule for Boilers, Process Heaters, and Stationary Engines and Gas Turbines at Minor Sources.

§117.570. Use of Emissions Credits for Compliance.

§117.571. Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER A. DEFINITIONS

30 TAC §117.10

STATUTORY AUTHORITY

The new section is proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed section implements Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.10. Definitions.

Unless specifically defined in the Texas Clean Air Act or Chapter 101 of this title (relating to General Air Quality Rules), the terms in this chapter have the meanings commonly used in the field of air pollution control. Additionally, the following meanings apply, unless the context clearly indicates otherwise. Additional definitions for terms used in this chapter are found in §3.2 and §101.1 of this title (relating to Definitions).

(1) Annual capacity factor--The total annual fuel consumed by a unit divided by the fuel that could be consumed by the unit if operated at its maximum rated capacity for 8,760 hours per year.

(2) Applicable ozone nonattainment area--The following areas, as designated under the 1990 Federal Clean Air Act Amendments.

(A) Beaumont-Port Arthur ozone nonattainment area--An area consisting of Hardin, Jefferson, and Orange Counties.

(B) Dallas-Fort Worth ozone nonattainment area--An area consisting of Collin, Dallas, Denton, and Tarrant Counties.

(C) Dallas-Fort Worth eight-hour ozone nonattainment area--An area consisting of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(D) Houston-Galveston-Brazoria ozone nonattainment area--An area consisting of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(3) Auxiliary steam boiler--Any combustion equipment within an electric power generating system, as defined in this section, that is used to produce steam for purposes other than generating electricity. An auxiliary steam boiler produces steam as a replacement for steam produced by another piece of equipment that is not operating due to planned or unplanned maintenance.

(4) Average activity level for fuel oil firing--The product of an electric utility unit's maximum rated capacity for fuel oil firing and the average annual capacity factor for fuel oil firing for the period from January 1, 1990, to December 31, 1993.

(5) Block one-hour average--An hourly average of data, collected starting at the beginning of each clock hour of the day and continuing until the start of the next clock hour.

(6) Boiler--Any combustion equipment fired with solid, liquid, and/or gaseous fuel used to produce steam or to heat water.

(7) Btu--British thermal unit.

(8) Chemical processing gas turbine--A gas turbine that vents its exhaust gases into the operating stream of a chemical process.

(9) Continuous emissions monitoring system (CEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates in units of the applicable emission limitation.

(10) Daily--A calendar day starting at midnight and continuing until midnight the following day.

(11) Diesel engine--A compression-ignited two- or four-stroke engine that liquid fuel injected into the combustion chamber ignites when the air charge has been compressed to a temperature sufficiently high for auto-ignition.

(12) Duct burner--A unit that combusts fuel and that is placed in the exhaust duct from another unit (such as a stationary gas turbine, stationary internal combustion engine, kiln, etc.) to allow the firing of additional fuel to heat the exhaust gases.

(13) Electric generating facility (EGF)--A unit that generates electric energy for compensation and is owned or operated by a person doing business in this state, including a municipal corporation, electric cooperative, or river authority.

(14) Electric power generating system--One electric power generating system consists of either:

(A) for the purposes of Subchapter C of this chapter (relating to Combustion Control at Major Utility Electric Generation Sources in Ozone Nonattainment Areas), all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) at electric generating facility (EGF) accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, public utility, or a Public Utility Commission of Texas regulated utility, or any of its successors; and are entirely located in one of the following ozone nonattainment areas:

(i) Beaumont-Port Arthur;

(ii) Dallas-Fort Worth;

(iii) Dallas-Fort Worth eight-hour; or

(iv) Houston-Galveston-Brazoria;

(B) for the purposes of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas), all boilers, auxiliary steam boilers, and stationary gas turbines at EGF accounts that generate electric energy for compensation; are owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors; and are located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County; or

(C) for the purposes of Subchapter B of this chapter (relating to Combustion Control at Major Industrial, Commercial, and Institutional Sources in Ozone Nonattainment Areas), all units in the Houston-Galveston-Brazoria ozone nonattainment area that generate electricity but do not meet the conditions specified in subparagraph (A) of this paragraph, including, but not limited to, cogeneration units and units owned by independent power producers.

(15) Emergency situation--As follows.

(A) An emergency situation is any of the following:

(i) an unforeseen electrical power failure from the serving electric power generating system;

(ii) the period of time that an emergency notice, as defined in *ERCOT Protocols, Section 2: Definitions and Acronyms* (April 25, 2006), issued by the Electric Reliability Council of Texas, Inc. (ERCOT) as specified in *ERCOT Protocols, Section 5: Dispatch* (April 26, 2006), is applicable to the serving electric power generating system. The emergency situation is considered to end upon expiration of the emergency notice issued by ERCOT;

(iii) an unforeseen failure of on-site electrical transmission equipment (e.g., a transformer);

(iv) an unforeseen failure of natural gas service;

(v) an unforeseen flood or fire, or a life-threatening situation; or

(vi) operation of emergency generators for Federal Aviation Administration licensed airports, military airports, or manned space flight control centers for the purposes of providing power in anticipation of a power failure due to severe storm activity.

(B) An emergency situation does not include operation for purposes of supplying power for distribution to the electric grid, operation for training purposes, or other foreseeable events.

(16) Functionally identical replacement--A unit that performs the same function as the existing unit that it replaces, with the condition that the unit replaced must be physically removed or rendered permanently inoperable before the unit replacing it is placed into service.

(17) Heat input--The chemical heat released due to fuel combustion in a unit, using the higher heating value of the fuel. This does not include the sensible heat of the incoming combustion air. In the case of carbon monoxide (CO) boilers, the heat input includes the enthalpy of all regenerator off-gases and the heat of combustion of the incoming CO and of the auxiliary fuel. The enthalpy change of the fluid catalytic cracking unit regenerator off-gases refers to the total heat content of the gas at the temperature it enters the CO boiler, referring to the heat content at 60 degrees Fahrenheit, as being zero.

(18) Heat treat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to heat the metal so as to produce specific physical properties in that metal.

(19) High heat release rate--A ratio of boiler design heat input to firebox volume (as bounded by the front firebox wall where the burner is located, the firebox side waterwall, and extending to the level just below or in front of the first row of convection pass tubes) greater than or equal to 70,000 British thermal units per hour per cubic foot.

(20) Horsepower rating--The engine manufacturer's maximum continuous load rating at the lesser of the engine or driven equipment's maximum published continuous speed.

(21) Incinerator--As follows.

(A) For the purposes of this chapter, the term "incinerator" includes both of the following:

(i) a control device that combusts or oxidizes gases or vapors (e.g., thermal oxidizer, catalytic oxidizer, vapor combustor); and

(ii) an incinerator as defined in §101.1 of this title (relating to Definitions).

(B) The term "incinerator" does not apply to boilers or process heaters as defined in this section, or to flares as defined in §101.1 of this title.

(22) Industrial boiler--Any combustion equipment, not including utility or auxiliary steam boilers as defined in this section, fired with liquid, solid, or gaseous fuel, that is used to produce steam or to heat water.

(23) International Standards Organization (ISO) conditions--ISO standard conditions of 59 degrees Fahrenheit, 1.0 atmosphere, and 60% relative humidity.

(24) Large utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity equal to or greater than 500 megawatts.

(25) Lean-burn engine--A spark-ignited or compression-ignited, Otto cycle, diesel cycle, or two-stroke engine that is not capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(26) Low annual capacity factor boiler, process heater, or gas turbine supplemental waste heat recovery unit--An industrial, commercial, or institutional boiler; process heater; or gas turbine supplemental waste heat recovery unit with maximum rated capacity:

(A) greater than or equal to 40 million British thermal units per hour (MMBtu/hr), but less than 100 MMBtu/hr and an annual heat input less than or equal to 2.8 (10^{11}) British thermal units per year (Btu/yr), based on a rolling 12-month average; or

(B) greater than or equal to 100 MMBtu/hr and an annual heat input less than or equal to 2.2 (10^{11}) Btu/yr, based on a rolling 12-month average.

(27) Low annual capacity factor stationary gas turbine or stationary internal combustion engine--A stationary gas turbine or stationary internal combustion engine that is demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(28) Low heat release rate--A ratio of boiler design heat input to firebox volume less than 70,000 British thermal units per hour per cubic foot.

(29) Major source--Any stationary source or group of sources located within a contiguous area and under common control that emits or has the potential to emit:

(A) at least 50 tons per year (tpy) of nitrogen oxides (NO_x) and is located in the Beaumont-Port Arthur ozone nonattainment area;

(B) at least 50 tpy of NO_x and is located in the Dallas-Fort Worth or Dallas-Fort Worth eight-hour ozone nonattainment area;

(C) at least 25 tpy of NO_x and is located in the Houston-Galveston-Brazoria ozone nonattainment area; or

(D) the amount specified in the major source definition contained in the Prevention of Significant Deterioration of Air Quality regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations §52.21 as amended June 3, 1993 (effective June 3, 1994), and is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Comal, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Hays, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(30) Maximum rated capacity--The maximum design heat input, expressed in million British thermal units per hour, unless:

(A) the unit is a boiler, utility boiler, or process heater operated above the maximum design heat input (as averaged over any one-hour period), in which case the maximum operated hourly rate must be used as the maximum rated capacity; or

(B) the unit is limited by operating restriction or permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(C) the unit is a stationary gas turbine, in which case the manufacturer's rated heat consumption at the International Standards Organization (ISO) conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity; or

(D) the unit is a stationary, internal combustion engine, in which case the manufacturer's rated heat consumption at Diesel Equipment Manufacturer's Association or ISO conditions must be used as the maximum rated capacity, unless limited by permit condition to a lesser heat input, in which case the limiting condition must be used as the maximum rated capacity.

(31) Megawatt (MW) rating--The continuous MW output rating or mechanical equivalent by a gas turbine manufacturer at International Standards Organization conditions, without consideration to the increase in gas turbine shaft output and/or the decrease in gas turbine fuel consumption by the addition of energy recovered from exhaust heat.

(32) Nitric acid--Nitric acid that is 30% to 100% in strength.

(33) Nitric acid production unit--Any source producing nitric acid by either the pressure or atmospheric pressure process.

(34) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(35) Parts per million by volume (ppmv)--All ppmv emission specifications specified in this chapter are referenced on a dry basis. When required to adjust pollutant concentrations to a specified oxygen (O_2) correction basis, the following equation must be used. Figure: 30 TAC §117.10(35)

(36) Peaking gas turbine or engine--A stationary gas turbine or engine used intermittently to produce energy on a demand basis.

(37) Plant-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(38) Plant-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units at a major source when firing at their maximum rated capacity to the total maximum rated capacities for those units.

(39) Predictive emissions monitoring system (PEMS)--The total equipment necessary for the continuous determination and recordkeeping of process gas concentrations and emission rates using process or control device operating parameter measurements and a conversion equation or computer program to produce results in units of the applicable emission limitation.

(40) Process heater--Any combustion equipment fired with liquid and/or gaseous fuel that is used to transfer heat from combustion gases to a process fluid, superheated steam, or water for the purpose of heating the process fluid or causing a chemical reaction. The term "process heater" does not apply to any unfired waste heat recovery heater that is used to recover sensible heat from the exhaust of any combustion equipment, or to boilers as defined in this section.

(41) Pyrolysis reactor--A unit that produces hydrocarbon products from the endothermic cracking of feedstocks such as ethane, propane, butane, and naphtha using combustion to provide indirect heating for the cracking process.

(42) Reheat furnace--A furnace that is used in the manufacturing, casting, or forging of metal to raise the temperature of that metal in the course of processing to a temperature suitable for hot working or shaping.

(43) Rich-burn engine--A spark-ignited, Otto cycle, four-stroke, naturally aspirated or turbocharged engine that is capable of being operated with an exhaust stream oxygen concentration equal to or less than 0.5% by volume, as originally designed by the manufacturer.

(44) Small utility system--All boilers, auxiliary steam boilers, and stationary gas turbines that are located in the Dallas-Fort Worth or the Dallas-Fort Worth eight-hour ozone nonattainment area, and were part of one electric power generating system on January 1, 2000, that had a combined electric generating capacity less than 500 megawatts.

(45) Stationary gas turbine--Any gas turbine system that is gas and/or liquid fuel fired with or without power augmentation. This unit is either attached to a foundation or is portable equipment operated at a specific minor or major source for more than 90 days in any 12-month period. Two or more gas turbines powering one shaft must be treated as one unit.

(46) Stationary internal combustion engine--A reciprocating engine that remains or will remain at a location (a single site at a building, structure, facility, or installation) for more than 12 consecutive months. Included in this definition is any engine that, by itself or in or on a piece of equipment, is portable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of portability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine being replaced is included in calculating the consecutive residence time period. An engine is considered stationary if it is removed from one location for a period and then returned to the same location in an attempt to circumvent the consecutive residence time requirement. Nonroad engines, as defined in 40 Code of Federal Regulations §89.2, are not considered stationary for the purposes of this chapter.

(47) System-wide emission rate--The ratio of the total actual nitrogen oxides mass emissions rate discharged into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission rate.

(48) System-wide emission specification--The ratio of the total allowable nitrogen oxides mass emissions rate dischargeable into the atmosphere from affected units in an electric power generating system or portion thereof located within a single ozone nonattainment area when firing at their maximum rated capacity to the total maximum rated capacities for those units. For fuel oil firing, average activity levels must be used in lieu of maximum rated capacities for the purpose of calculating the system-wide emission specification.

(49) Thirty-day rolling average--An average, calculated for each day that fuel is combusted in a unit, of all the hourly emissions data for the preceding 30 days that fuel was combusted in the unit.

(50) Twenty-four hour rolling average--An average, calculated for each hour that fuel is combusted (or acid is produced, for a nitric or adipic acid production unit), of all the hourly emissions data for the preceding 24 hours that fuel was combusted in the unit.

(51) Unit--A unit consists of either:

(A) for the purposes of §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) and each requirement of this chapter associated with §§117.105, 117.205, 117.305, 117.1005, 117.1105, and 117.1205 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section;

(B) for the purposes of §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title (relating to Emission Specifications for Attainment Demonstration) and each requirement of this chapter associated with §§117.110, 117.210, 117.310, 117.1010, 117.1110, and 117.1210 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of nitrogen oxides (NO_x) at a major source, as defined in this section;

(C) for the purposes of §117.2010 and §117.2110 of this title (relating to Emission Specifications; and Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.2010 and §117.2110 of this title, any boiler, process heater, stationary gas turbine (including any duct burner in the turbine exhaust duct), or stationary internal combustion engine, as defined in this section;

(D) for the purposes of §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.3310 of this title, any stationary internal combustion engine, as defined in this section; or

(E) for the purposes of §117.410 and §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) and each requirement of this chapter associated with §117.410 and §117.1310 of this title, any boiler, process heater, stationary gas turbine, or stationary internal combustion engine, as defined in this section, or any other stationary source of NO_x at a major source, as defined in this section.

(52) Utility boiler--Any combustion equipment owned or operated by an electric cooperative, independent power producer, municipality, river authority, public utility, or Public Utility Commission of Texas regulated utility, fired with solid, liquid, and/or gaseous fuel, used to produce steam for the purpose of generating electricity. Stationary gas turbines, including any associated duct burners and unfired waste heat boilers, are not considered to be utility boilers.

(53) Wood--Wood, wood residue, bark, or any derivative fuel or residue thereof in any form, including, but not limited to, sawdust, sander dust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER B. COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1. BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.100, 117.103, 117.105, 117.110, 117.115, 117.123, 117.125, 117.130, 117.135, 117.140, 117.145, 117.150, 117.152, 117.154, 117.156

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.100. Applicability.

The provisions of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) apply to the following units located at any major stationary source of nitrogen oxides located within the Beaumont-Port Arthur ozone nonattainment area:

(1) industrial, commercial, or institutional boilers and process heaters;

(2) stationary gas turbines; and

(3) stationary internal combustion engines.

§117.103. Exemptions.

(a) General exemptions. Units exempted from the provisions of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources), except as specified in §§117.140(i), 117.145(f)(6), 117.150(c)(1), and 117.154(a)(5) of this title (relating to Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) any new units placed into service after November 15, 1992, except for new units that are qualified, at the option of the owner or operator, as functionally identical replacement for existing units under §117.105(a)(3) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced;

(2) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity of less than 40 million British thermal units per hour (MMBtu/hr);

(3) heat treating furnaces and reheat furnaces;

(4) flares, incinerators, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(5) dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying;

(6) stationary gas turbines and stationary internal combustion engines that are used as follows:

(A) in research and testing;

(B) for purposes of performance verification and testing;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(7) stationary gas turbines with a megawatt (MW) rating of less than 1.0 MW;

(8) stationary internal combustion engines with a horsepower (hp) rating of less than 300 hp;

(9) any stationary diesel engine; and

(10) any cogeneration boiler that recovers waste heat from, or utilizes as a fuel source the tail gas from one or more carbon black reactors.

(b) RACT exemptions. Units exempted from §117.105 of this title include the following:

(1) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity less than 100 MMBtu/hr;

(2) any low annual capacity factor boiler, process heater, stationary gas turbine, or stationary internal combustion engine as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces that were regulated as existing facilities in 40 Code of Federal Regulations Part 266, Subpart H, as was in effect on June 9, 1993;

(4) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents);

(5) duct burners used in turbine exhaust ducts;

(6) any stationary gas turbine with a MW rating less than 10.0 MW;

(7) any new units placed into service after November 15, 1992, except for new units that were placed into service as functionally identical replacement for existing units subject to the provisions of this division as of June 9, 1993. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced;

(8) stationary gas turbines and engines, that are demonstrated to operate less than 850 hours per year, based on a rolling 12-month average; and

(9) stationary internal combustion engines with a hp rating of less than 300 hp.

(c) Attainment demonstration exemptions. Units exempted from §117.110 of this title (relating to Emission Specifications for Attainment Demonstration) include units exempted from emission specifications in subsection (b)(2) - (5) and (8) of this section.

§117.105. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission specifications of this section, except as provided in §§117.115, 117.123, or 117.9800 of this title (relating to Alternative Plant-Wide Emission Specifications; Source Cap; and Use of Emission Credits for Compliance).

(1) For purposes of this subchapter, the lower of any permit nitrogen oxides (NO_x) emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the emission specifications of subsections (b) - (d) of this section apply, except that:

(A) gas-fired boilers and process heaters operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 pounds per million British thermal units (lb/MMBtu) heat input, are limited to that rate for the purposes of this subchapter; and

(B) gas-fired boilers and process heaters that have had NO_x reduction projects permitted since November 15, 1990, and prior to June 9, 1993, that were solely for the purpose of making early NO_x reductions, are subject to the appropriate emission specification of subsection (b) of this section. The affected person shall document that the NO_x reduction project was solely for the purpose of obtaining early reductions, and include this documentation in the initial control plan required in §117.150 of this title (relating to Initial Control Plan Procedures).

(2) For purposes of calculating NO_x emission limitations under this section from existing permit limits, the following procedure must be used:

(A) the NO_x emission limit explicitly stated in lb/MMBtu of heat input by permit provision (converted from low heating value to high heating value, as necessary); or

(B) the NO_x emission limit is the limit calculated as the permit Maximum Allowable Emission Rate Table emission limit in pounds per hour, divided by the maximum heat input to the unit in million British thermal units per hour (MMBtu/hr), as represented in the permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate must be calculated from Table 6 of the permit application, using the design maximum fuel flow rate and higher heating value of the fuel, or, if neither of the above are available, the unit's nameplate heat input.

(3) For any unit placed into service after June 9, 1993, and before the final compliance date as specified in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission specifications of subsections (b) - (d) of this section apply. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission limitations of §117.115 or §117.123 of this title. Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(b) For each boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, the applicable NO_x emission specification is as follows:

(1) gas-fired boilers, as follows:

(A) low heat release boilers with no preheated air or preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(B) low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(C) low heat release boilers with preheated air greater than or equal to 400 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(D) high heat release boilers with no preheated air or preheated air less than 250 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(E) high heat release boilers with preheated air greater than or equal to 250 degrees Fahrenheit and less than 500 degrees Fahrenheit, 0.24 lb/MMBtu of heat input; or

(F) high heat release boilers with preheated air greater than or equal to 500 degrees Fahrenheit, 0.28 lb/MMBtu of heat input;

(2) gas-fired process heaters, based on either air preheat temperature or firebox temperature, as follows:

(A) based on air preheat temperature:

(i) process heaters with preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.13 lb/MMBtu of heat input; or

(iii) process heaters with preheated air greater than or equal to 400 degrees Fahrenheit, 0.18 lb/MMBtu of heat input; or

(B) based on firebox temperature:

(i) process heaters with a firebox temperature less than 1,400 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with a firebox temperature greater than or equal to 1,400 degrees Fahrenheit and less than 1,800 degrees Fahrenheit, 0.125 lb/MMBtu of heat input; or

(iii) process heaters with a firebox temperature greater than or equal to 1,800 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(3) liquid fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(4) wood fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(5) any unit operated with a combination of gaseous, liquid, or wood fuel, a variable emission limit calculated as the heat input weighted sum of the applicable emission limits of this subsection;

(6) for any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, a multiplier of up to 1.25 times the appropriate emission limit in this subsection may be used for that eight-hour period. The total hydrogen volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen in the fuel supply. The multiplier may not be used to increase limits set by permit. The following equation must be used by an owner or operator using a gas-fired boiler or process heater that is subject to this paragraph and one of the rolling 30-day averaging period emission limitations contained in paragraph (1) or (2) of this subsection to calculate an emission limitation for each rolling 30-day period:
Figure: 30 TAC §117.105(b)(6)

(7) for units that operate with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.140 of this title (relating to Continuous Demonstration of Compliance), the emission limits apply as:

(A) the mass of NO_x emitted per unit of energy input (lb/MMBtu), on a rolling 30-day average period; or

(B) the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in lb/MMBtu; and

(8) for units that do not operate with a NO_x CEMS or PEMS under §117.140 of this title, the emission limits apply in pounds per hour, as specified in paragraph (7)(B) of this subsection.

(c) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 10.0 MW, emissions in excess of a block one-hour average concentration of 42 parts per million by volume (ppmv) NO_x and 132 ppmv carbon monoxide (CO) at 15% oxygen (O_2), dry basis. For stationary gas turbines equipped with CEMS or PEMS for CO, the owner or operator may elect to comply with the CO specification of this subsection using a 24-hour rolling average.

(d) No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine rated 300 horsepower (hp) or greater, NO_x emissions in excess of a block one-hour average of 2.0 grams per horsepower-hour (g/hp-hr) and CO emissions in excess of a block one-hour average of 3.0 g/hp-hr.

(e) No person shall allow the discharge into the atmosphere from any gas-fired, lean-burn, stationary, reciprocating internal combustion engine rated 300 hp or greater, NO_x emissions in excess of 3.0 g/hp-hr and CO emissions in excess of 3.0 g/hp-hr, either as:

(1) a block one-hour average limit; or

(2) a 30-day rolling average limit. The owner or operator shall ensure compliance with a 30-day rolling average using:

(A) a PEMS or CEMS under §117.140 of this title; or

(B) a monitoring system that:

(i) computes predicted emissions as a function of engine speed and torque using curves or equations supplied by the engine manufacturer or developed through engine testing, that:

(I) may be adjusted by engine testing; and

(II) must be shown to be consistent with the required initial and biennial compliance testing; and

(ii) monitors and records data representative of engine torque and speed at sufficient frequency to accurately compute the 30-day average NO_x.

(f) No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) or (b) of this section, CO emissions in excess of the following specifications:

(1) for gas or liquid fuel-fired boilers or process heaters, 400 ppmv at 3.0% O_2, dry basis;

(2) for wood fuel-fired boilers or process heaters, 775 ppmv at 7.0% O_2, dry basis; and

(3) for units equipped with CEMS or PEMS for CO, the specifications of paragraphs (1) and (2) of this subsection apply on a rolling 24-hour averaging period. For units not equipped with CEMS or PEMS for CO, the specifications apply on a one-hour average.

(g) No person shall allow the discharge into the atmosphere from any unit subject to a NO_x emission specification in this section (including an alternative to the NO_x limit in this section under §117.115 or §117.123 of this title) ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(h) This section no longer applies to any gas-fired boiler or process heater after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9000(3) of this title.

§117.110. Emission Specifications for Attainment Demonstration.

(a) Nitrogen oxides (NO_x) emission specifications. No person shall allow the discharge into the atmosphere from any gas-fired boiler or process heater with a maximum rated capacity equal to or greater than 40 million British thermal units per hour in the Beaumont-Port Arthur ozone nonattainment area, emissions of NO_x in excess of the following, except as provided in subsection (d) of this section and §117.103(c) of this title (relating to Exemptions):

(1) boilers, 0.10 pounds per million British thermal units (lb/MMBtu) of heat input; and

(2) process heaters, 0.08 lb/MMBtu of heat input.

(b) NO_x averaging time. The emission specifications of subsection (a) of this section apply:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.140 of this title (relating to Continuous Demonstration of Compliance), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable NO_x emission specification in lb/MMBtu; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.140 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission specifications may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(c) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) of this section, emissions in excess of the following, except as provided in §117.125 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) Carbon monoxide (CO) emissions must not exceed 400 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry basis (or alternatively, 3.0 grams per horsepower-hour for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines and gas-fired lean-burn engines; 0.0% O_2, dry, for fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents); 7.0% O_2, dry, for boilers and industrial furnaces units that were regulated as existing facilities in 40 Code of Federal Regulations Part 266, Subpart H (as was in effect on June 9, 1993) and for wood-fired boilers; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO specifications in paragraph (1) of this subsection do not apply to stationary internal combustion engines subject to §117.105(e) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)).

(d) Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications);

(B) §117.123 of this title (relating to Source Cap); or

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.125 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.125 of this title.

§117.115. Alternative Plant-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.110 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO_x emission reductions obtained by compliance with a plant-wide emission specification. Any owner or operator who elects to comply with a plant-wide emission specification shall reduce emissions of NO_x from affected units so that if all such units were operated at their maximum rated capacity, the plant-wide emission rate of NO_x from these units would not exceed the plant-wide emission specification as defined in §117.10 of this title (relating to Definitions).

(b) The owner or operator shall establish an enforceable NO_x emission limit for each affected unit at the source as follows.

(1) For boilers and process heaters that operate with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) in accordance with §117.140 of this title (relating to Continuous Demonstration of Compliance), the emission specifications apply in:

(A) the units of the applicable standard (the mass of NO_x emitted per unit of energy input (pounds per million British thermal units (lb/MMBtu) or parts per million by volume (ppmv)), on a rolling 30-day average period; or

(B) as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(2) For boilers and process heaters that do not operate with CEMS or PEMS, the emission specifications apply as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(3) For stationary gas turbines, the emission specifications apply as the NO_x concentration in ppmv at 15% oxygen (O_2), dry basis on a block one-hour average.

(4) For stationary internal combustion engines, the NO_x emission specifications apply in units of grams per horsepower-hour (g/hp-hr) on a block one-hour average.

(c) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission specification of §117.105 or §117.110 of this title at maximum rated capacity in calculating the plant-wide emission specification and shall assign to the

unit the maximum allowable NO_x emission rate while firing gas, calculated in accordance with subsection (a) of this section. The owner or operator shall also:

(1) comply with the assigned maximum allowable emission rate while firing gas only;

(2) comply with the liquid fuel emission specification of §117.105 of this title while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission rate and the liquid fuel emission specification of §117.105 of this title while operating on liquid and gaseous fuel concurrently.

(d) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from liquid fuel shall use a heat input weighted sum of the appropriate gaseous and liquid fuel emission specifications of §117.105 or §117.110 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(e) An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted sum of the appropriate emission specifications of §117.105 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(f) Units exempted from emission specifications in accordance with §117.103(b) and (c) of this title (relating to Exemptions) are also exempt under this section and must not be included in the plant-wide emission specification, except as follows. The owner or operator of exempted units as defined in §117.103(b) and (c) of this title may opt to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications.

(1) Low annual capacity factor boilers, process heaters, stationary gas turbines, or stationary internal combustion engines as defined in §117.10 of this title are not to be considered as part of the opt-in class of equipment.

(2) The ammonia and carbon monoxide emission specifications of §117.105 or §117.110 of this title apply to the opt-in units.

(3) The individual NO_x emission specification that is to be used in calculating the alternative plant-wide emission specifications is the lowest of any applicable permit emission specification determined in accordance with §117.105(a) of this title, the specification of paragraph (4) of this subsection, or when applicable, subsection (i) of this section.

(4) The equipment classes that may be included in the alternative plant-wide emission specifications and the NO_x emission rates that are to be used in calculating the alternative plant-wide emission specifications are listed in the table titled §117.115(f) OPT-IN UNITS.
Figure: 30 TAC §117.115(f)(4)

(g) Solely for the purposes of calculating the plant-wide emission specification, the allowable NO_x emission rate (in pounds per hour) for each affected unit must be calculated from the lowest of the emission specifications of §117.105 of this title, or when applicable, §117.110 of this title, or any applicable permit emission specification identified in subsection (i) of this section, as follows.

(1) For each affected boiler and process heater, the rate is determined by the following equation.
Figure: 30 TAC §117.115(g)(1)

(2) For each affected stationary internal combustion engine, the rate is determined by the following equation.
Figure: 30 TAC §117.115(g)(2)

(3) For each affected stationary gas turbine, the rate is determined by the following equations.
Figure: 30 TAC §117.115(g)(3)

(4) Each affected gas-fired boiler and process heater firing gaseous fuel that contains more than 50% hydrogen (H_2) by volume, on an annual basis, may be adjusted with a multiplier of up to 1.25 times the product of its maximum rated capacity and its NO_x emission specification of §117.105 of this title.

(A) Double application of the H_2 content multiplier using this paragraph and §117.105(b)(6) of this title is not allowed.

(B) The multiplier may not be used to increase a limit set by permit.

(C) The fuel gas composition must be sampled and analyzed every three hours.

(D) This paragraph is not applicable for establishing compliance with §117.110 of this title.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% H_2 by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of up to 1.25 times the emission limit assigned to the unit in this section for that eight-hour period. The total H_2 volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H_2 in the fuel supply. This subsection is not applicable to:

(1) units under subsection (g)(4) of this section;

(2) increase limits set by permit; or

(3) establish compliance with §117.110 of this title.

(i) When using this section for establishing alternative compliance with §117.110 of this title, the individual NO_x emission specification that is to be used in calculating the alternative plant-wide emission specifications is the lowest of the specification of §117.110 of this title, the actual emission rate as of September 1, 1997, and any applicable permit emission specification, in effect on September 10, 1993.

§117.123. Source Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.110 of this title (relating to Emission Specifications for Attainment Demonstration), by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission specifications of §117.105 or §117.110 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap must comply with the requirements of §117.105 or §117.110 of this title, or §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications).

(b) The source cap allowable mass emission rate must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.123(b)(1)

(2) A maximum daily cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.123(b)(2)

(3) Each emission unit included in the source cap is subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) The owner or operator at its option may include any of the entire classes of exempted units listed in §117.115(f) of this title in a source cap. For compliance with §117.105(a) - (d) of this title, such units are required to reduce emissions available for use in the cap by an additional amount calculated in accordance with the United States Environmental Protection Agency's proposed Economic Incentive Program rules for offset ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, *Federal Register* (58 FR 11110).

(5) For stationary internal combustion engines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.115(g)(2) of this title.

(6) For stationary gas turbines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.115(g)(3) of this title.

(c) The owner or operator who elects to comply with this section shall:

(1) for each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.140 of this title (relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and must be used to demonstrate continuous compliance with the source cap;

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.140 of this title. The required PEMS and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and must be used to demonstrate continuous compliance with the source cap; or

(C) for units not subject to continuous monitoring requirements and units belonging to the equipment classes listed in §117.115(f) of this title, the owner or operator may use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.135(e) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units are limited to the maximum emission rates obtained from testing conducted under §117.135(e) of this title; and

(2) for each operating unit equipped with CEMS, either use a PEMS in accordance with §117.140 of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.135(e) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 Code of Federal Regulations §75.46 must be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records must also be retained in accordance with §117.145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.145 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(g) For compliance with §117.105(a) - (d) of this title by November 15, 1999, a unit that has operated since November 15, 1990, and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993, may be included in the source cap emission limit under the following conditions.

(1) The unit must have actually operated since November 15, 1990.

(2) For purposes of calculating the source cap emission limit, the applicable emission limit for retired units must be calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1990, and June 9, 1993, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, plus one standard deviation of the average daily heat input for that period. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from shutdowns or curtailments that have not been used for netting or offset purposes under the requirements of Chapter 116 of this title or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

(h) For compliance with §117.105(e) or §117.110 of this title, a unit that has been permanently retired or decommissioned and rendered inoperable may be included in the source cap under the following conditions.

(1) Shutdowns must have occurred after September 10, 1993.

(2) The source cap emission limit for retired units is calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1997, and December 31, 1999, the actual heat input must be the average daily heat input for the continuous

time period that the unit was in service, consistent with the heat input used to represent the unit's emissions in the attainment demonstration modeling inventory. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title may not be included in the baseline for establishing the cap.

(i) A unit that has been shut down and rendered inoperable after June 9, 1993, but not permanently retired, should be identified in the initial control plan and may be included in the source cap to comply with the NO_x emission specifications of this division required by November 15, 1999.

(j) An owner or operator who chooses to use the source cap option shall include in the initial control plan, if required to be filed under §117.150 of this title (relating to Initial Control Plan Procedures), a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the initial control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in subsection (b)(1) of this section. An owner or operator who chooses to use the source cap option shall include in the final control plan procedures of §117.152 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology) the information necessary under this section to demonstrate initial compliance with the source cap.

(k) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emissions event, as defined in §101.1 of this title (relating to Definitions), must be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the executive director that actual emissions were less than maximum emissions during such periods.

§117.125. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or the carbon monoxide (CO) or ammonia specifications of §117.110(c) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.105 of this title or the CO or ammonia specifications in §117.110(c) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.105 or §117.110 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

§117.130. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) in compliance with those specifications.

(b) The owner or operator shall operate any unit subject to the plant-wide emission specification of §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications) such that the assigned maximum nitrogen oxides (NO_x) emission rate for each unit expressed in units of the applicable emission specification and averaging period, is in accordance with the list approved by the executive director pursuant to §117.152 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(c) The owner or operator shall operate any unit subject to the source cap emission limits of §117.123 of this title (relating to Source Cap) in compliance with those limitations.

(d) All units subject to §§117.105, 117.110(a), 117.115, or 117.123 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; Alternative Plant-Wide Emission Specifications; and Source Cap) must be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O_2 on a dry basis for stationary gas turbines).

(5) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(7) Each stationary internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.135. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen emissions while firing gaseous fuel or, as applicable:

(A) hydrogen (H_2) fuel for units that may fire more than 50% H_2 by volume; and

(B) liquid and solid fuel.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) All units must be tested that belong to equipment classes elected to be included in:

(A) the alternative plant-wide emission specifications as defined in §117.115(f) of this title (relating to Alternative Plant-Wide Emission Specifications); or

(B) the source cap as defined in §117.123(b)(4) of this title (relating to Source Cap).

(4) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (e) or (f) of this section and must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods.

(c) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.140 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, as a minimum, include completion of the initial relative accuracy test audit and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Early testing conducted before March 21, 1999, may be used to demonstrate compliance with the standards specified in this division, if the owner or operator of an affected facility demonstrates to the executive director that the prior compliance testing at least meets the requirements of subsections (a), (b), (c), (e), and (f) of this section. For early testing, the compliance stack test report required by subsection (g) of this section must be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or CEMS or PEMS performance evaluation at any time.

(e) Compliance with the emission specifications of this division for units operating without CEMS or PEMS must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).

(f) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.140 of this title must be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a NO_x emission specification in pounds per million British thermal units on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, is used to determine compliance with the NO_x emission specification.

(3) For units complying with a CO emission specification, on a rolling 24-hour average, any 24-hour period is used to determine compliance with the CO emission specification.

(4) For units complying with §117.123 of this title, a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.123(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(g) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.140. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ±5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) Totalizing fuel flow meters are required for the following units that are subject to §117.105 or §117.110 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); and Emission Specifications for Attainment Demonstration) and for stationary gas turbines that are exempt under §117.103(b)(6) of this title (relating to Exemptions):

(A) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):

(i) boilers;

(ii) process heaters; and

(iii) gas turbine supplemental-fired waste heat recovery units;

(B) stationary, reciprocating internal combustion engines not exempt by §117.103(a)(6), (a)(8), (b)(8), or (b)(9) of this title; and

(C) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (e) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (e) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (f) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.103(b)(3) - (5) and (7) - (9) of this title;

(B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (e) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (e) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (e) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) boilers and process heaters that are vented through a common stack and the total rated heat input from the units combined is greater than or equal to 250 MMBtu/hr and the annual heat input combined is greater than $2.2(10^{11})$ Btu/yr;

(D) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(E) units that use a chemical reagent for reduction of NO_x; and

(F) units that the owner or operator elects to comply with the NO_x emission specifications of §117.105 or §117.110(a) of this title using a pounds per million British thermal unit (lb/MMBtu) limit on a 30-day rolling average.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.105 or §117.110(a) of this title, units listed §117.103(b)(3) - (5) and (7) - (9) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1040(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) if the methods specified in subparagraphs (A) - (C) of this paragraph are not used, the owner or operator shall use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.135(f) of this title (relating to Initial Demonstration of Compliance).

(d) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(e) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(g) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(h) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.105 of this title or §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (d) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system must be accurate to within ±5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.105 or §117.115 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.103(a)(6)(D), (b)(2), or (b)(8) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

(j) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.105(b)(6) or §117.115(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.135 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.105 or §117.110(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission specifications.

(l) Enforcement of NO_x RACT limits. If compliance with §117.105 of this title is selected, no unit subject to §117.105 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.105 of this title. If compliance with §117.115 of this title is selected, no unit subject to §117.115 of this title may be operated at an emission rate higher than that approved by the executive director under §117.152(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(m) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.103(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

§117.145. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.135 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under

§117.140 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.135 of this title and any CEMS or PEMS RATA conducted under §117.140 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system under §117.140 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.140(h)(2) of this title, excess emissions are computed as each one-hour period that the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission specifications in §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)); and

(B) for units complying with §117.123 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports)* must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to the emission specifications in §§117.105, 117.110, or 117.115 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative Plant-Wide Emission Specifications) shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.130(d)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.140(g) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.140(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.140 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.130(d)(7) of this title; and

(ii) §117.140(g) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for each stationary gas turbine monitored by steam-to-fuel or water-to-fuel ratio in accordance with §117.140(h) of this title, records of hourly:

(A) pounds of steam or water injected;

(B) pounds of fuel consumed; and

(C) the steam-to-fuel or water-to-fuel ratio;

(5) for hydrogen (H_2) fuel monitoring in accordance with §117.140(j) of this title, records of the volume percent H_2 every three hours;

(6) for units claimed exempt from emission specifications using the exemption of §117.103(a)(6)(D) or (b)(2) of this title (relating to Exemptions), either records of monthly:

(A) fuel usage, for exemptions based on heat input; or

(B) hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.103(a)(6)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(7) records of carbon monoxide measurements specified in §117.140(d) of this title;

(8) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(9) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.135 of this title.

§117.150. Initial Control Plan Procedures.

(a) The owner or operator of any major source of nitrogen oxides (NO_x) shall submit, for the approval of the executive director, an initial control plan for installation of NO_x emissions control equipment (if required in order to comply with the emission specifications of this subchapter) and demonstration of anticipated compliance with the applicable requirements of this subchapter.

(1) This section applies only to sources that were major for NO_x emissions before November 15, 1992.

(2) The executive director shall approve the plan if it contains all the information specified in this section.

(3) Revisions to the initial control plan must be submitted with the final control plan.

(b) The owner or operator shall provide results of emissions testing using portable or reference method analyzers or, as available, initial demonstration of compliance testing conducted in accordance with §117.135(e) or (f) of this title (relating to Initial Demonstration of Compliance) for NO_x, carbon monoxide (CO), and oxygen emissions while firing gaseous fuel (and as applicable, hydrogen (H_2) fuel for units that may fire more than 50% H_2 by volume) and liquid and/or solid fuel at the maximum rated capacity or as near thereto as practicable, for the units listed in this subsection. Previous testing documentation for any claimed test waiver as allowed by §117.135(d) of this title must be submitted with the initial control plan. Any units that were not operated between June 9, 1993, and April 1, 1994, and do not have earlier representative emission test results available, must be tested and the results submitted to the executive director, with certification of the equipment's shutdown period, within 90 days after the date such equipment is returned to operation. Test results are required for the following units:

(1) boilers and process heaters with a maximum rated capacity greater than or equal to 40 million British thermal units per hour (MMBtu/hr), except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

(2) boilers and industrial furnaces with a maximum rated capacity greater than or equal to 40 MMBtu/hr that were regulated as existing facilities in 40 Code of Federal Regulations Part 266, Subpart H, as was in effect on June 9, 1993, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title;

(3) fluid catalytic cracking units with a maximum rated capacity greater than or equal to 40 MMBtu/hr;

(4) gas turbine supplemental waste heat recovery units with a maximum rated fired capacity greater than or equal to 40 MMBtu/hr, except for low annual capacity factor gas turbine supplemental waste heat recovery units as defined in §117.10 of this title;

(5) stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW, except for low annual capacity factor gas turbines or peaking gas turbines as defined in §117.10 of this title; and

(6) gas-fired, stationary, reciprocating internal combustion engines rated 300 horsepower (hp) or greater, except for low annual capacity factor engines or peaking engines as defined in §117.10 of this title.

(c) The initial control plan must be submitted by April 1, 1994, and must contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 MMBtu/hr; all stationary, reciprocating internal combustion engines rated 300 hp or greater; all stationary gas turbines with an MW rating of greater than or equal to 1.0 MW; the maximum rated capacity, anticipated annual capacity factor, the facility identification numbers and emission point numbers as submitted to the Industrial Emissions Assessment Section of the commission; and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit for each unit;

(2) identification of all units subject to the emission specifications of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications), or §117.123 of this title (relating to Source Cap);

(3) identification of all boilers, process heaters, stationary gas turbines, or engines with a claimed exemption from the emission specifications of §117.105 or §117.115 of this title and the rule basis for the claimed exemption;

(4) identification of the election to use individual emission specifications as specified in §117.105 of this title, the plant-wide emission specification as specified in §117.115 of this title, or the source cap emission limit as specified in §117.123 of this title to achieve compliance with this rule;

(5) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(6) a list of units requiring operating modifications to comply with §117.130(d) of this title (relating to Operating Requirements)

and the type of modification to be applied for all such units, including an anticipated construction schedule;

(7) a list of any units that have been or will be retired, decommissioned, or shut down and rendered inoperable after November 15, 1990, as a result of compliance with §117.105 of this title, indicating the date of occurrence or anticipated date of occurrence;

(8) the basis for calculation of the rate of NO_x emissions for each unit to demonstrate that each unit will achieve the NO_x emission rates specified in this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources). For fluid catalytic cracking unit CO boilers, the basis for calculation of the NO_x emission rate in pounds per million British thermal units (lb/MMBtu) for each unit must include the following:

(A) the calculation of the CO boiler heat input;

(B) the calculation of the appropriate CO boiler volumetric inlet and exhaust flowrates; and

(C) the calculation of the CO boiler NO_x emission rate in lb/MMBtu;

(9) for units required to install totalizing fuel flow meters in accordance with §117.140(a) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter;

(10) for units that have had NO_x reduction projects as specified in §117.105(a)(1)(B) of this title, documentation that such projects were undertaken solely for the purpose of obtaining early NO_x reductions; and

(11) test results in accordance with subsection (b) of this section.

§117.152. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.100 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of the units listed in §117.100 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.105 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.105 of this title;

(B) §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications);

(C) §117.123 of this title (relating to Source Cap);

(D) §117.125 of this title (relating to Alternative Case Specific Specifications); or

(E) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of NO_x control for each unit;

(4) the emissions measured by testing required in §117.135 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.135 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources), for:

(A) boilers and heaters with a maximum rated capacity greater than or equal to 100.0 million British thermal units per hour;

(B) gas turbines with a megawatt (MW) rating greater than or equal to 10.0 MW; and

(C) gas-fired internal combustion engines rated greater than or equal to 300 horsepower.

(b) For sources complying with §117.115 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected:

(A) boiler or process heater, the maximum allowable NO_x emission rate in pounds per million British thermal units (rolling 30-day average), or in pounds per hour (block one-hour average) indicating whether the fuel is gas, high-hydrogen gas, solid, or liquid;

(B) stationary gas turbine, the maximum allowable NO_x emission in parts per million by volume at 15% oxygen, dry basis on a block one-hour average; and

(C) stationary internal combustion engine, the maximum allowable NO_x emission rate in grams per horsepower-hour on a block one-hour average;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the plant-wide average in accordance with §117.115(g) of this title; and

(4) maintain a copy of the approved list of emission specifications for verification of continued compliance with the requirements of §117.115 of this title.

(c) For sources complying with §117.123 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the historical average daily heat input information, H_i;

(B) the maximum daily heat input, H_{mi};

(C) the applicable restriction, R_i; and

(D) the method of monitoring emissions;

(3) an explanation of the basis of the values of H_i, H_{mi}, and R_i; and

(4) the information applicable to shutdown units, specified in §117.123(g) and (h) of this title.

(d) The report must be submitted by the applicable date specified for final control plans in §117.9000 of this title (relating

to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission limit on a rolling 30-day average, according to the applicable schedule given in §117.9000 of this title.

§117.154. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of units listed in §117.110 of this title (relating to Emission Specifications for Attainment Demonstration) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.110 of this title. The report must include:

(1) the section under which NO_x compliance is being established, either:

(A) §117.110 of this title;

(B) §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications);

(C) §117.123 of this title (relating to Source Cap); or

(D) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.135 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.135 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.110 of this title.

(b) For sources complying with §117.123 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.123(b)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.123(b)(1) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted to the executive director by the applicable date specified for final control plans in §117.9000 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9000 of this title.

§117.156. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specifications and the final compliance dates of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources).

(1) For sources complying with §117.105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.110 of this title (relating to Emission Specifications for Attainment Demonstration), or §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications), replacement new units may be included in the control plan.

(2) For sources complying with §117.123 of this title (relating to Source Cap), any new unit must be included in the source cap, if the unit belongs to an equipment category that is included in the source cap.

(3) The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 2. DALLAS-FORT WORTH OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.200, 117.203, 117.205, 117.210, 117.215, 117.223, 117.225, 117.230, 117.235, 117.240, 117.245, 117.252, 117.254, 117.256

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules,

which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.200. Applicability.

(a) The provisions of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources), apply to the following units located at any major stationary source of nitrogen oxides (NO_x) located within the Dallas-Fort Worth ozone nonattainment area:

(1) industrial, commercial, or institutional boilers and process heaters;

(2) stationary gas turbines; and

(3) stationary internal combustion engines.

(b) This division no longer applies to any units that are subject to the emission specifications in §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) located at any major stationary source of NO_x located within Collin, Dallas, Denton, and Tarrant Counties after the appropriate compliance date(s) specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

§117.203. Exemptions.

(a) General exemptions. Units exempted from the provisions of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources), except as specified in §§117.240(i), 117.245(f)(6), and 117.254(a)(5) of this title (relating to Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) any new units placed into service after November 15, 1992, except for new units that are qualified, at the option of the owner or operator, as functionally identical replacement for existing units under §117.205(a)(3) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced;

(2) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity of less than 40 million British thermal units per hour (MMBtu/hr);

(3) heat treating furnaces and reheat furnaces;

(4) flares, incinerators, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(5) dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying;

(6) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing;

(B) for purposes of performance verification and testing;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(7) stationary gas turbines with a megawatt (MW) rating of less than 1.0 MW;

(8) stationary internal combustion engines with a horsepower (hp) rating of less than 300 hp; and

(9) any stationary diesel engine.

(b) RACT exemptions. Units exempted from the emissions specifications of §117.205 of this title include the following:

(1) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity less than 100 MMBtu/hr;

(2) any low annual capacity factor boiler, process heater, stationary gas turbine, or stationary internal combustion engine as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces that were regulated as existing facilities in 40 Code of Federal Regulations Part 266, Subpart H, as was in effect on June 9, 1993;

(4) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents);

(5) duct burners used in turbine exhaust ducts;

(6) any lean-burn, stationary, reciprocating internal combustion engine;

(7) any stationary gas turbine with a MW rating less than 10.0 MW;

(8) any new units placed into service after November 15, 1992, except for new units that were placed into service as functionally identical replacement for existing units subject to the provisions of this division as of June 9, 1993. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced;

(9) stationary gas turbines and engines, that are demonstrated to operate less than 850 hours per year, based on a rolling 12-month average; and

(10) stationary internal combustion engines with a hp rating of less than 300 hp.

(c) Attainment demonstration exemptions. Units exempted from the emissions specifications of §117.210 of this title (relating to Emission Specifications for Attainment Demonstration) include units

exempted from emission specifications in subsection (b)(2) - (5) and (9) of this section.

§117.205. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission specifications of this section, except as provided in §§117.215, 117.223, or 117.9800 of this title (relating to Alternative Plant-Wide Emission Specifications; Source Cap; and Use of Emission Credits for Compliance).

(1) For purposes of this subchapter, the lower of any permit nitrogen oxides (NO_x) emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the emission specifications of subsections (b) - (d) of this section apply, except that:

(A) gas-fired boilers and process heaters operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 pounds per million British thermal units (lb/MMbtu) heat input, are limited to that rate for the purposes of this subchapter; and

(B) gas-fired boilers and process heaters that have had NO_x reduction projects permitted since November 15, 1990, and prior to June 9, 1993, that were solely for the purpose of making early NO_x reductions, are subject to the appropriate emission specification of subsection (b) of this section.

(2) For purposes of calculating NO_x emission specifications under this section from existing permit limits, the following procedure must be used:

(A) the NO_x limit explicitly stated in lb/MMBtu of heat input by permit provision (converted from low heating value to high heating value, as necessary); or

(B) the NO_x emission limit is the limit calculated as the permit Maximum Allowable Emission Rate Table emission limit in pounds per hour, divided by the maximum heat input to the unit in million British thermal units per hour (MMBtu/hr), as represented in the permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate must be calculated from Table 6 of the permit application, using the design maximum fuel flow rate and higher heating value of the fuel, or, if neither of the above are available, the unit's nameplate heat input.

(3) For any unit placed into service after June 9, 1993, and before the final compliance date as specified in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission limits of subsections (b) - (d) of this section apply. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission limitations of §117.215 or §117.223 of this title. Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(b) For each boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, the applicable NO_x emission specification is as follows:

(1) gas-fired boilers, as follows:

(A) low heat release boilers with no preheated air or preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(B) low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(C) low heat release boilers with preheated air greater than or equal to 400 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(D) high heat release boilers with no preheated air or preheated air less than 250 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(E) high heat release boilers with preheated air greater than or equal to 250 degrees Fahrenheit and less than 500 degrees Fahrenheit, 0.24 lb/MMBtu of heat input; or

(F) high heat release boilers with preheated air greater than or equal to 500 degrees Fahrenheit, 0.28 lb/MMBtu of heat input;

(2) gas-fired process heaters, based on either air preheat temperature or firebox temperature, as follows:

(A) based on air preheat temperature:

(i) process heaters with preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.13 lb/MMBtu of heat input; or

(iii) process heaters with preheated air greater than or equal to 400 degrees Fahrenheit, 0.18 lb/MMBtu of heat input; or

(B) based on firebox temperature:

(i) process heaters with a firebox temperature less than 1,400 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with a firebox temperature greater than or equal to 1,400 degrees Fahrenheit and less than 1,800 degrees Fahrenheit, 0.125 lb/MMBtu of heat input; or

(iii) process heaters with a firebox temperature greater than or equal to 1,800 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(3) liquid fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(4) wood fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(5) any unit operated with a combination of gaseous, liquid, or wood fuel, a variable emission specification calculated as the heat input weighted sum of the applicable emission specifications of this subsection;

(6) for any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, a multiplier of up to 1.25 times the appropriate emission limit in this subsection may be used for that eight-hour period. The total hydrogen volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen in the fuel supply. The multiplier may not be used to increase limits set by permit. The following equation must be used by an owner or operator using a gas-fired boiler or process heater that is subject to this paragraph and one of the rolling 30-day averaging period emission

specifications contained in paragraph (1) or (2) of this subsection to calculate an emission specification for each rolling 30-day period: Figure: 30 TAC §117.205(b)(6)

(7) for units that operate with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.240 of this title (relating to Continuous Demonstration of Compliance), the emission limits apply as:

(A) the mass of NO_x emitted per unit of energy input (lb/MMBtu), on a rolling 30-day average period; or

(B) the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in (lb/MMBtu); and

(8) for units that do not operate with a NO_x CEMS or PEMS under §117.240 of this title, the emission specifications apply in pounds per hour, as specified in paragraph (7)(B) of this subsection.

(c) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 10.0 MW, emissions in excess of a block one-hour average concentration of 42 parts per million by volume (ppmv) NO_x and 132 ppmv carbon monoxide (CO) at 15% oxygen (O_2), dry basis. For stationary gas turbines equipped with CEMS or PEMS for CO, the owner or operator may elect to comply with the CO specification of this subsection using a 24-hour rolling average.

(d) No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine rated 300 horsepower (hp) or greater, NO_x emissions in excess of a block one-hour average of 2.0 grams per horsepower-hour (g/hp-hr) and CO emissions in excess of a block one-hour average of 3.0 g/hp-hr.

(e) No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) or (b) of this section, CO emissions in excess of the following specifications:

(1) for gas or liquid fuel-fired boilers or process heaters, 400 ppmv at 3.0% O_2, dry basis;

(2) for wood fuel-fired boilers or process heaters, 775 ppmv at 7.0% O_2, dry basis; and

(3) for units equipped with CEMS or PEMS for CO, the specifications of paragraphs (1) and (2) of this subsection apply on a rolling 24-hour averaging period. For units not equipped with CEMS or PEMS for CO, the specifications apply on a one-hour average.

(f) No person shall allow the discharge into the atmosphere from any unit subject to a NO_x emission specification in this section (including an alternative to the NO_x limit in this section under §117.215 or §117.223 of this title) ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

§117.210. Emission Specifications for Attainment Demonstration.

(a) Emission specifications. No person shall allow the discharge into the atmosphere emissions in excess of the following emission specifications, except as provided in subsection (d) of this section and §117.203(c) of this title (relating to Exemptions).

(1) Gas-fired boilers with a maximum rated capacity equal to or greater than 40 million British thermal units per hour, must comply with 30 parts per million by volume (ppmv) nitrogen oxides (NO_x), at 3.0% oxygen (O_2), dry basis, according to the applicable schedule in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(2) Gas-fired and dual-fuel, lean-burn, stationary reciprocating internal combustion engines rated 300 horsepower (hp) or greater, must comply with a NO_x emission specification of 2.0 grams per horsepower-hour (g/hp-hr) and a carbon monoxide (CO) emission specification of 3.0 g/hp-hr, according to the applicable schedule in §117.9010 of this title.

(b) NO_x averaging time. The emission specifications of subsection (a) of this section apply:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.240 of this title (relating to Continuous Demonstration of Compliance), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in pounds per million British thermal units; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.240 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission limits may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(c) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) of this section, emissions in excess of the following, except as provided in §117.225 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) CO emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines and gas-fired lean-burn engines; 7.0% O_2, dry, for wood-fired boilers; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO specifications in paragraph (1) of this subsection do not apply to stationary internal combustion engines subject to subsection (a)(2) of this section.

(d) Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications);

(B) §117.223 of this title (relating to Source Cap); or

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.225 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia emission specifications of this section in accordance with §117.225 of this title.

§117.215. Alternative Plant-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.210 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO_x emission reductions obtained by compliance with a plant-wide emission specification. Any owner or operator who elects to comply with a plant-wide emission specification shall reduce emissions of NO_x from affected units so that if all such units were operated at their maximum rated capacity, the plant-wide emission rate of NO_x from these units would not exceed the plant-wide emission specification as defined in §117.10 of this title (relating to Definitions).

(b) The owner or operator shall establish an enforceable NO_x emission limit for each affected unit at the source as follows.

(1) For boilers and process heaters that operate with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) in accordance with §117.240 of this title (relating to Continuous Demonstration of Compliance), the emission limits apply in:

(A) the units of the applicable standard (the mass of NO_x emitted per unit of energy input (pound per million British thermal units (lb/MMBtu) or parts per million by volume (ppmv)), on a rolling 30-day average period; or

(B) as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(2) For boilers and process heaters that do not operate with CEMS or PEMS, the emission specifications apply as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(3) For stationary gas turbines, the emission specifications apply as the NO_x concentration in ppmv at 15% oxygen (O_2), dry basis on a block one-hour average.

(4) For stationary internal combustion engines, the NO_x emission specifications apply in units of grams per horsepower-hour (g/hp-hr) on a block one-hour average.

(c) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission limit of §117.205 or §117.210 of this title at maximum rated capacity in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate while firing gas, calculated in accordance with subsection (a) of this section. The owner or operator shall also:

(1) comply with the assigned maximum allowable emission rate while firing gas only;

(2) comply with the liquid fuel emission specification of §117.205 of this title while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission rate and the liquid fuel emission specification of §117.205 of this title while operating on liquid and gaseous fuel concurrently.

(d) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from liquid fuel shall use a heat input weighted sum of the appropriate gaseous and liquid fuel emission specifications of §117.205 or §117.210 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(e) An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted sum of the appropriate emission specifications of §117.205 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(f) Units exempted from emission specifications in accordance with §117.203(b) and (c) of this title (relating to Exemptions) are also exempt under this section and must not be included in the plant-wide emission specification, except as follows. The owner or operator of exempted units as defined in §117.203(b) and (c) of this title may opt to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications.

(1) Low annual capacity factor boilers, process heaters, stationary gas turbines, or stationary internal combustion engines as defined in §117.10 of this title are not to be considered as part of the opt-in class of equipment.

(2) The ammonia and carbon monoxide emission specifications of §117.205 or §117.210 of this title apply to the opt-in units.

(3) The individual NO_x emission limit that is to be used in calculating the alternative plant-wide emission specifications is the lowest of any applicable permit emission specification determined in accordance with §117.205(a) of this title, the specification of paragraph (4) of this subsection, or when applicable, subsection (i) of this section.

(4) The equipment classes that may be included in the alternative plant-wide emission specifications and the NO_x emission rates that are to be used in calculating the alternative plant-wide emission specifications are listed in the table titled §117.215(f) OPT-IN UNITS.
Figure: 30 TAC §117.215(f)(4)

(g) Solely for the purposes of calculating the plant-wide emission specification, the allowable NO_x emission rate (in pounds per hour) for each affected unit must be calculated from the lowest of the emission specifications of §117.205 of this title, or when applicable, §117.210 of this title, or any applicable permit emission specification identified in subsection (i) of this section, as follows.

(1) For each affected boiler and process heater, the rate is determined by the following equation.
Figure: 30 TAC §117.215(g)(1)

(2) For each affected stationary internal combustion engine, the rate is determined by the following equation.
Figure: 30 TAC §117.215(g)(2)

(3) For each affected stationary gas turbine, the rate is determined by the following equations.

Figure: 30 TAC §117.215(g)(3)

(4) Each affected gas-fired boiler and process heater firing gaseous fuel that contains more than 50% hydrogen (H_2) by volume, over an annual basis, may be adjusted with a multiplier of up to 1.25 times the product of its maximum rated capacity and its NO_x emission specification of §117.205 of this title.

(A) Double application of the H_2 content multiplier using this paragraph and §117.205(b)(6) of this title is not allowed.

(B) The multiplier may not be used to increase a limit set by permit.

(C) The fuel gas composition must be sampled and analyzed every three hours.

(D) This paragraph is not applicable for establishing compliance with §117.210 of this title.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% H_2 by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of up to 1.25 times the emission limit assigned to the unit in this section for that eight-hour period. The total H_2 volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H_2 in the fuel supply. This subsection is not applicable to:

(1) units under subsection (g)(4) of this section;

(2) increase limits set by permit; or

(3) establish compliance with §117.210 of this title.

(i) When using this section for establishing alternative compliance with §117.210 of this title, the individual NO_x emission limit that is to be used in calculating the alternative plant-wide emission specifications is the lowest of the specification of §117.210 of this title, the actual emission rate as of September 1, 1997, and any applicable permit emission specification in effect on September 1, 1997.

§117.223. Source Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.210 of this title (relating to Emission Specifications for Attainment Demonstration), by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission limits of §117.205 or §117.210 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap must comply with the requirements of §§117.205, 117.210, or 117.215 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative Plant-Wide Emission Specifications).

(b) The source cap allowable mass emission rate must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.223(b)(1)

(2) A maximum daily cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.223(b)(2)

(3) Each emission unit included in the source cap is subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) The owner or operator at its option may include any of the entire classes of exempted units listed in §117.215(f) of this title in a source cap. For compliance with §117.205(a) - (d) of this title, such units are required to reduce emissions available for use in the cap by an additional amount calculated in accordance with the United States Environmental Protection Agency's proposed Economic Incentive Program rules for offset ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, *Federal Register* (58 FR 11110).

(5) For stationary internal combustion engines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.215(g)(2) of this title.

(6) For stationary gas turbines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.215(g)(3) of this title.

(c) The owner or operator who elects to comply with this section shall:

(1) for each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.240 of this title (relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and must be used to demonstrate continuous compliance with the source cap;

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.240 of this title. The required PEMS and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and must be used to demonstrate continuous compliance with the source cap; or

(C) for units not subject to continuous monitoring requirements and units belonging to the equipment classes listed in §117.215(f) of this title, the owner or operator may use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.235(e) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units are limited to the maximum emission rates obtained from testing conducted under §117.235(e) of this title; and

(2) for each operating unit equipped with CEMS, either use a PEMS in accordance with §117.240 of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.235(e) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 CFR §75.46 must be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records must also be retained in accordance with

§117.245 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.245 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(g) For compliance with §117.205(a) - (d) of this title by November 15, 1999, a unit that has operated since November 15, 1990, and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993, may be included in the source cap emission limit under the following conditions.

(1) The unit must have actually operated since November 15, 1990.

(2) For purposes of calculating the source cap emission limit, the applicable emission limit for retired units must be calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1990, and June 9, 1993, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, plus one standard deviation of the average daily heat input for that period. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from shutdowns or curtailments that have not been used for netting or offset purposes under the requirements of Chapter 116 of this title or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

(h) For compliance with §117.210 of this title, a unit that has been permanently retired or decommissioned and rendered inoperable may be included in the source cap under the following conditions.

(1) Shutdowns must have occurred after September 1, 1997.

(2) The source cap emission limit for retired units is calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1997, and December 31, 1999, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, consistent with the heat input used to represent the unit's emissions in the attainment demonstration modeling inventory. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title may not be included in the baseline for establishing the cap.

(i) A unit that has been shut down and rendered inoperable after June 9, 1993, but not permanently retired, should be identified in the final control plan and may be included in the source cap to comply with the NO_x emission specifications of this division applicable in the Dallas-Fort Worth ozone nonattainment area, required by March 31, 2001.

(j) An owner or operator who chooses to use the source cap option shall include in the final control plan, if required to be filed under §117.252 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), a plan for initial compliance. The owner or operator shall include in the final control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the final control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in subsection (b)(1) of this section. An owner or operator who chooses to use the source cap option shall include in the final control plan procedures of §117.252 of this title the information necessary under this section to demonstrate initial compliance with the source cap.

(k) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emission events, as defined in §101.1 of this title (relating to Definitions), must be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the executive director that actual emissions were less than maximum emissions during such periods.

§117.225. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or the carbon monoxide (CO) or ammonia specifications of §117.210(c) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.205 of this title or the CO or ammonia specifications in §117.210(c) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.205 or §117.210 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not

necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

§117.230. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) in compliance with those specifications.

(b) The owner or operator shall operate any unit subject to the plant-wide emission specification of §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications) such that the assigned maximum nitrogen oxides (NO_x) emission rate for each unit expressed in units of the applicable emission limit and averaging period, is in accordance with the list approved by the executive director pursuant to §117.252 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(c) The owner or operator shall operate any unit subject to the source cap emission limits of §117.223 of this title (relating to Source Cap) in compliance with those limitations.

(d) All units subject to the emission limitations of §§117.205, 117.210(a), 117.215, or 117.223 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; Alternative Plant-Wide Emission Specifications; and Source Cap) must be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O_2 on a dry basis for stationary gas turbines).

(5) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(7) Each stationary internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.235. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen emissions while firing gaseous fuel or, as applicable:

(A) hydrogen (H_2) fuel for units that may fire more than 50% H_2 by volume; and

(B) liquid and solid fuel.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) All units must be tested that belong to equipment classes elected to be included in:

(A) the alternative plant-wide emission specifications as defined in §117.215(f) of this title (relating to Alternative Plant-Wide Emission Specifications); or

(B) the source cap as defined in §117.223(b)(4) of this title (relating to Source Cap).

(4) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (e) or (f) of this section and must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods.

(c) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.240 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial relative accuracy test audit and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Early testing conducted before March 21, 1999, may be used to demonstrate compliance with the standards specified in this division, if the owner or operator of an affected facility demonstrates to the executive director that the prior compliance testing at least meets the requirements of subsections (a), (b), (c), (e), and (f) of this section. For early testing, the compliance stack test report required by subsection (g) must be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or CEMS or PEMS performance evaluation at any time.

(e) Compliance with the emission specifications of this division for units operating without CEMS or PEMS must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).

(f) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.240 of this title, must be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a NO_x emission specification in pound per million British thermal units on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable is used to determine compliance with the NO_x emission specification.

(3) For units complying with a CO emission specification, on a rolling 24-hour average, any 24-hour period is used to determine compliance with the CO emission specification.

(4) For units complying with §117.223 of this title, a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.223(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(g) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.240. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ±5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) Totalizing fuel flow meters are required for the following units that are subject to §117.205 or §117.210 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); and Emission Specifications for Attainment Demonstration), and for stationary gas turbines that are exempt under §117.203(b)(7) of this title (relating to Exemptions):

(A) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):

(i) boilers;

(ii) process heaters; and

(iii) gas turbine supplemental-fired waste heat recovery units;

(B) stationary, reciprocating internal combustion engines not exempt by §117.203(a)(6) or (8) of this title, or §117.203(b)(9) or (10) of this title; and

(C) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (e) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (e) of this section may use a single totalizing fuel flow meter.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (f) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.203(b)(3) - (5) and (8) - (10) of this title;

(B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (e) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (e) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (e) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(D) units that use a chemical reagent for reduction of NO_x; and

(E) units that the owner or operator elects to comply with the NO_x emission specifications of §117.205 or §117.210(a) of

this title using a pound per million British thermal units (lb/MMBtu) limit on a 30-day rolling average.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.205 or §117.210(a) of this title, units listed in §117.203(b)(3) - (5) and (8) - (10) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1140(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) if the methods specified in subparagraphs (A) - (C) of this paragraph are not used, the owner or operator shall use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.235(f) of this title (relating to Initial Demonstration of Compliance).

(d) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(e) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(g) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(h) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.205 or §117.215 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Alternative Plant-Wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (d) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system must be accurate to within ±5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.205 or §117.215 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.203(a)(6)(D), (b)(2), or (b)(9) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

(j) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.205(b)(6) or §117.215(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.235 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.205 or §117.210(a) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(l) Enforcement of NO_x RACT limits. If compliance with §117.205 of this title is selected, no unit subject to §117.205 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.205 of this title. If compliance with §117.215 of this title is selected, no unit subject to §117.215 of this title may be operated at an emission rate higher than that approved by the executive director under §117.252(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(m) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.203(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule must be subject to the review and approval of the executive director.

§117.245. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.235 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.240 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.235 of this title and any CEMS or PEMS RATA conducted under §117.240 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system under §117.240 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.240(h)(2) of this title, excess emissions are computed as each one-hour period that the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission specifications in §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)); and

(B) for units complying with §117.223 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports)* must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to the emission specifications in §117.205, §117.210 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Emission Specifications for Attainment Demonstration), or §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications) shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the

end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.230(d)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.240(g) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.240(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.240 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pound per million British thermal units heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.230(d)(7) of this title; and

(ii) §117.240(g) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for each stationary gas turbine monitored by steam-to-fuel or water-to-fuel ratio in accordance with §117.240(h) of this title, records of hourly:

(A) pounds of steam or water injected;

(B) pounds of fuel consumed; and

(C) the steam-to-fuel or water-to-fuel ratio;

(5) for hydrogen (H_2) fuel monitoring in accordance with §117.240(j) of this title, records of the volume percent H_2 every three hours;

(6) for units claimed exempt from emission specifications using the exemption of §117.203(a)(6)(D) or (b)(2) of this title (relating to Exemptions), either records of monthly:

(A) fuel usage, for exemptions based on heat input; or

(B) hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.203(a)(6)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(7) records of carbon monoxide measurements specified in §117.240(d) of this title;

(8) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(9) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.235 of this title.

§117.252. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.200 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of the units listed in §117.200 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.205 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.205 of this title;

(B) §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications);

(C) §117.223 of this title (relating to Source Cap);

(D) §117.225 of this title (relating to Alternative Case Specific Specifications); or

(E) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of control of NO_x emissions for each unit;

(4) the emissions measured by testing required in §117.235 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.235 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources), for:

(A) boilers and heaters with a maximum rated capacity greater than or equal to 100.0 million British thermal units per hour;

(B) gas turbines with a megawatt (MW) rating greater than or equal to 10.0 MW; and

(C) gas-fired internal combustion engines rated greater than or equal to 300 horsepower.

(b) For sources complying with §117.215 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected:

(A) boiler or process heater, the maximum allowable NO_x emission rate in pounds per million British thermal units (rolling 30-day average), or in pounds per hour (block one-hour average) indicating whether the fuel is gas, high-hydrogen gas, solid, or liquid;

(B) stationary gas turbine, the maximum allowable NO_x emission in parts per million by volume at 15% oxygen, dry basis on a block one-hour average; and

(C) stationary internal combustion engine, the maximum allowable NO_x emission rate in grams per horsepower-hour on a block one-hour average;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the plant-wide average in accordance with §117.215(g) of this title; and

(4) maintain a copy of the approved list of emission specifications for verification of continued compliance with the requirements of §117.215 of this title.

(c) For sources complying with §117.223 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates; and

(2) a list containing, for each unit in the cap:

(A) the historical average daily heat input information, H_i;

(B) the maximum daily heat input, H_{mi};

(C) the applicable restriction, R_i;

(D) the method of monitoring emissions; and

(3) an explanation of the basis of the values of H_i, H_{mi}, and R_i; and

(4) the information applicable to shutdown units, specified in §117.223(g) and (h) of this title.

(d) The report must be submitted by the applicable date specified for final control plans in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission limit on a rolling 30-day average, according to the applicable schedule given in §117.9010 of this title.

§117.254. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of units listed in §117.210 of this title (relating to Emission Specifications for Attainment Demonstration) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.210 of this title. The report must include:

(1) the section under which NO_x compliance is being established, either:

(A) §117.210 of this title;

(B) §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications);

(C) §117.223 of this title (relating to Source Cap); or

(D) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.235 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.235 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.210 of this title.

(b) For sources complying with §117.223 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.223(b)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.223(b)(1) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted to the executive director by the applicable date specified for final control plans in §117.9010 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9010 of this title.

§117.256. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specifications and the final compliance dates of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources).

(1) For sources complying with §117.205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.210 of this title (relating to Emission Specifications for Attainment Demonstration), or §117.215 of this title (relating to Alternative Plant-Wide Emission Specifications), replacement new units may be included in the control plan.

(2) For sources complying with §117.223 of this title (relating to Source Cap), any new unit must be included in the source cap, if

the unit belongs to an equipment category that is included in the source cap.

(3) The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 3. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.300, 117.303, 117.305, 117.310, 117.315, 117.320, 117.323, 117.325, 117.330, 117.335, 117.340, 117.345, 117.350, 117.352, 117.354, 117.356

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.300. Applicability.

The provisions of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) apply to the following units located at any major stationary source of nitrogen oxides located within the Houston-Galveston-Brazoria ozone nonattainment area:

(1) industrial, commercial, or institutional boilers and process heaters;

(2) stationary gas turbines;

(3) stationary internal combustion engines;

(4) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents);

(5) boilers and industrial furnaces that were regulated as existing facilities in 40 Code of Federal Regulations Part 266, Subpart H (as was in effect on June 9, 1993);

(6) duct burners used in turbine exhaust ducts;

(7) pulping liquor recovery furnaces;

(8) lime kilns;

(9) lightweight aggregate kilns;

(10) heat treating furnaces and reheat furnaces;

(11) magnesium chloride fluidized bed dryers; and

(12) incinerators.

§117.303. Exemptions.

(a) General exemptions. Units exempted from the provisions of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources), except as specified in §§117.310(f), 117.340(j), 117.345(f)(6) and (10), 117.350(c)(1), and 117.354(a)(5) of this title (relating to Emission Specifications for Attainment Demonstration; Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) any new units placed into service after November 15, 1992, except for new units that are qualified, at the option of the owner or operator, as functionally identical replacement for existing units under §117.305(a)(3) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. This exemption no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources);

(2) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity of less than 40 million British thermal units per hour (MMBtu/hr). This exemption no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title;

(3) heat treating furnaces and reheat furnaces. This exemption no longer applies to any heat treating furnace or reheat furnace with a maximum rated capacity of 20 MMBtu/hr or greater after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title;

(4) flares, incinerators, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers. This exemption no longer applies to the following units after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title:

(A) incinerators with a maximum rated capacity of 40 MMBtu/hr or greater; and

(B) pulping liquor recovery furnaces;

(5) dryers, kilns, or ovens used for drying, baking, cooking, calcining, and vitrifying. This exemption no longer applies to the following units after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title:

(A) magnesium chloride fluidized bed dryers; and

(B) lime kilns and lightweight aggregate kilns;

(6) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing;

(B) for purposes of performance verification and testing;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after October 1, 2001, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(7) stationary gas turbines with a megawatt (MW) rating of less than 1.0 MW. This exemption no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title;

(8) stationary internal combustion engines with a horsepower (hp) rating of less than 150 hp. This exemption no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration specified in §117.9020 of this title;

(9) any boiler or process heater with a maximum rated capacity of 2.0 MMBtu/hr or less;

(10) any stationary diesel engine placed into service before October 1, 2001, that:

(A) operates less than 100 hours per year, based on a rolling 12-month average; and

(B) has not been modified, reconstructed, or relocated on or after October 1, 2001. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(11) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after October 1, 2001, that:

(A) operates less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account.

(b) RACT exemptions. Units exempted from the emissions specifications of §117.305 of this title include the following:

(1) any industrial, commercial, or institutional boiler or process heater with a maximum rated capacity less than 100 MMBtu/hr;

(2) any low annual capacity factor boiler, process heater, stationary gas turbine, or stationary internal combustion engine as defined in §117.10 of this title (relating to Definitions);

(3) boilers and industrial furnaces that were regulated as existing facilities by the United States Environmental Protection Agency 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(4) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents);

(5) duct burners used in turbine exhaust ducts;

(6) any lean-burn, stationary, reciprocating internal combustion engine;

(7) any stationary gas turbine with a MW rating less than 10.0 MW;

(8) any new units placed into service after November 15, 1992, except for new units that were placed into service as functionally identical replacement for existing units subject to the provisions of this division as of June 9, 1993. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced;

(9) stationary gas turbines and engines, that are demonstrated to operate less than 850 hours per year, based on a rolling 12-month average; and

(10) stationary internal combustion engines with a hp rating of less than 150 hp.

§117.305. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge of air contaminants into the atmosphere to exceed the emission specifications of this section, except as provided in §§117.315, 117.323, or 117.9800 of this title (relating to Alternative Plant-Wide Emission Specifications; Source Cap; and Use of Emission Credits for Compliance).

(1) For purposes of this subchapter, the lower of any permit nitrogen oxides (NO_x) emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the emission specifications of subsections (b) - (d) of this section apply, except that:

(A) gas-fired boilers and process heaters operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 pounds per million British thermal units (lb/MMBtu) heat input, are limited to that rate for the purposes of this subchapter; and

(B) gas-fired boilers and process heaters that have had NO_x reduction projects permitted since November 15, 1990, and prior to June 9, 1993, that were solely for the purpose of making early NO_x reductions, are subject to the appropriate emission specification of subsection (b) of this section. The affected person shall document that the NO_x reduction project was solely for the purpose of obtaining early reductions, and include this documentation in the initial control plan required in §117.350 of this title (relating to Initial Control Plan Procedures).

(2) For purposes of calculating NO_x emission limitations under this section from existing permit limits, the following procedure must be used:

(A) the NO_x emission limit explicitly stated in lb/MMBtu of heat input by permit provision (converted from low heating value to high heating value, as necessary); or

(B) the NO_x emission limit is the limit calculated as the permit Maximum Allowable Emission Rate Table emission limit in pounds per hour, divided by the maximum heat input to the unit in million British thermal units per hour (MMBtu/hr), as represented in the permit application. In the event the maximum heat input to the unit is not explicitly stated in the permit application, the rate must be calculated from Table 6 of the permit application, using the design maximum fuel flow rate and higher heating value of the fuel, or, if neither of the above are available, the unit's nameplate heat input.

(3) For any unit placed into service after June 9, 1993, and before the final compliance date as specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission limits of subsections (b) - (d) of this section applies. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission limitations of §117.315 or §117.323 of this title. Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(b) For each boiler and process heater with a maximum rated capacity greater than or equal to 100.0 MMBtu/hr of heat input, the applicable NO_x emission specification is as follows:

(1) gas-fired boilers, as follows:

(A) low heat release boilers with no preheated air or preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(B) low heat release boilers with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(C) low heat release boilers with preheated air greater than or equal to 400 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(D) high heat release boilers with no preheated air or preheated air less than 250 degrees Fahrenheit, 0.20 lb/MMBtu of heat input;

(E) high heat release boilers with preheated air greater than or equal to 250 degrees Fahrenheit and less than 500 degrees Fahrenheit, 0.24 lb/MMBtu of heat input; or

(F) high heat release boilers with preheated air greater than or equal to 500 degrees Fahrenheit, 0.28 lb/MMBtu of heat input;

(2) gas-fired process heaters, based on either air preheat temperature or firebox temperature, as follows:

(A) based on air preheat temperature:

(i) process heaters with preheated air less than 200 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with preheated air greater than or equal to 200 degrees Fahrenheit and less than 400 degrees Fahrenheit, 0.13 lb/MMBtu of heat input; or

(iii) process heaters with preheated air greater than or equal to 400 degrees Fahrenheit, 0.18 lb/MMBtu of heat input; or

(B) based on firebox temperature:

(i) process heaters with a firebox temperature less than 1,400 degrees Fahrenheit, 0.10 lb/MMBtu of heat input;

(ii) process heaters with a firebox temperature greater than or equal to 1,400 degrees Fahrenheit and less than 1,800 degrees Fahrenheit, 0.125 lb/MMBtu of heat input; or

(iii) process heaters with a firebox temperature greater than or equal to 1,800 degrees Fahrenheit, 0.15 lb/MMBtu of heat input;

(3) liquid fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(4) wood fuel-fired boilers and process heaters, 0.30 lb/MMBtu of heat input;

(5) any unit operated with a combination of gaseous, liquid, or wood fuel, a variable emission limit calculated as the heat input weighted sum of the applicable emission limits of this subsection;

(6) for any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, a multiplier of up to 1.25 times the appropriate emission limit in this subsection may be used for that eight-hour period. The total hydrogen volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of hydrogen in the fuel supply. The multiplier may not be used to increase limits set by permit. The following equation must be used by an owner or operator using a gas-fired boiler or process heater that is subject to this paragraph and one of the rolling 30-day averaging period emission limitations contained in paragraph (1) or (2) of this subsection to calculate an emission limitation for each rolling 30-day period:
Figure: 30 TAC §117.305(b)(6)

(7) for units that operate with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.340 of this title (relating to Continuous Demonstration of Compliance), the emission specifications apply as:

(A) the mass of NO_x emitted per unit of energy input (lb/MMBtu), on a rolling 30-day average period; or

(B) the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable specification in lb/MMBtu; and

(8) for units that do not operate with a NO_x CEMS or PEMS under §117.340 of this title, the emission specifications apply in pounds per hour, as specified in paragraph (7)(B) of this subsection.

(c) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 10.0 MW, emissions in excess of a block one-hour average concentration of 42 parts per million by volume (ppmv) NO_x and 132 ppmv carbon monoxide (CO) at 15% oxygen (O_2), dry basis. For stationary gas turbines equipped with CEMS or PEMS for CO, the owner or operator may elect to comply with the CO emission specification of this subsection using a 24-hour rolling average.

(d) No person shall allow the discharge into the atmosphere from any gas-fired, rich-burn, stationary, reciprocating internal combustion engine rated 150 horsepower (hp) or greater, NO_x emissions in excess of a block one-hour average of 2.0 grams per horsepower-hour (g/hp-hr) and CO emissions is excess of a block one-hour average of 3.0 g/hp-hr.

(e) No person shall allow the discharge into the atmosphere from any boiler or process heater subject to NO_x emission specifications in subsection (a) or (b) of this section, CO emissions in excess of the following limitations:

(1) for gas or liquid fuel-fired boilers or process heaters, 400 ppmv at 3.0% O_2, dry basis;

(2) for wood fuel-fired boilers or process heaters, 775 ppmv at 7.0% O_2, dry basis; and

(3) for units equipped with CEMS or PEMS for CO, the limits of paragraphs (1) and (2) of this subsection apply on a rolling 24-hour averaging period. For units not equipped with CEMS or PEMS for CO, the specifications apply on a one-hour average.

(f) No person shall allow the discharge into the atmosphere from any unit subject to a NO_x emission specification in this section (including an alternative to the NO_x limit in this section under §117.315 or §117.323 of this title) ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(g) This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9020(2) of this title. For purposes of this subsection, this means that the RACT emission specifications of this section remain in effect until the emissions allocation for a unit under the Houston-Galveston-Brazoria mass emissions cap are equal to or less than the allocation that would be calculated using the RACT emission specifications of this section.

§117.310. Emission Specifications for Attainment Demonstration.

(a) Emission specifications for the Mass Emission Cap and Trade Program. The nitrogen oxides (NO_x) emission rate values used to determine allocations for Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) must be the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the following emission specifications:

(1) gas-fired boilers:

(A) with a maximum rated capacity equal to or greater than 100 million British thermal units per hour (MMBtu/hr), 0.020 pounds per million British thermal units (lb/MMBtu);

(B) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr, 0.030 lb/MMBtu; and

(C) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 parts per million by volume (ppmv) NO_x, at 3.0% oxygen (O_2), dry basis);

(2) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents), one of the following:

(A) 40 ppmv NO_x at 0.0% O_2, dry basis;

(B) a 90% NO_x reduction of the exhaust concentration used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 90% reduction in actual emissions, a consistent methodology must be used to calculate the 90% reduction; or

(C) alternatively, for units that did not use a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to determine the June - August 1997 exhaust concentration, the owner or operator may:

(i) install and certify a NO_x CEMS or PEMS as specified in §117.340(f) or (g) of this title (relating to Continuous Demonstration of Compliance) no later than June 30, 2001;

(ii) establish the baseline NO_x emission level to be the third quarter 2001 data from the CEMS or PEMS;

(iii) provide this baseline data to the executive director no later than October 31, 2001; and

(iv) achieve a 90% NO_x reduction of the exhaust concentration established in this baseline;

(3) boilers and industrial furnaces (BIF units) that were regulated as existing facilities in 40 Code of Federal Regulations (CFR) Part 266, Subpart H (as was in effect on June 9, 1993):

(A) with a maximum rated capacity equal to or greater than 100 MMBtu/hr, 0.015 lb/MMBtu; and

(B) with a maximum rated capacity less than 100 MMBtu/hr:

(i) 0.030 lb/MMBtu; or

(ii) an 80% reduction from the emission factor used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology must be used to calculate the 80% reduction;

(4) coke-fired boilers, 0.057 lb/MMBtu;

(5) wood fuel-fired boilers, 0.060 lb/MMBtu;

(6) rice hull-fired boilers, 0.089 lb/MMBtu;

(7) liquid-fired boilers, 2.0 pounds per 1,000 gallons of liquid burned;

(8) process heaters:

(A) other than pyrolysis reactors:

(i) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb/MMBtu; and

(ii) with a maximum rated capacity less 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 ppmv NO_x, at 3.0% O_2, dry basis); and

(B) pyrolysis reactors, 0.036 lb/MMBtu;

(9) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines:

(i) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and

(ii) all others, 0.50 g/hp-hr;

(B) gas-fired lean-burn engines, except as specified in subparagraph (C) of this paragraph:

(i) fired on landfill gas, 0.60 g/hp-hr; and

(ii) all others, 0.50 g/hp-hr;

(C) dual-fuel engines:

(i) with initial start of operation on or before December 31, 2000, 5.83 g/hp-hr; and

(ii) with initial start of operation after December 31, 2000, 0.50 g/hp-hr; and

(D) diesel engines, excluding dual-fuel engines, placed into service before October 1, 2001, that have not been modified, reconstructed, or relocated on or after October 1, 2001, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(E) for diesel engines, excluding dual-fuel engines, not subject to subparagraph (D) of this paragraph:

(i) with a horsepower rating of less than 11 horsepower (hp) that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2004, 7.0 g/hp-hr; and

(II) on or after October 1, 2004, 5.0 g/hp-hr;

(ii) with a horsepower rating of 11 hp or greater, but less than 25 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2004, 6.3 g/hp-hr; and

(II) on or after October 1, 2004, 5.0 g/hp-hr;

(iii) with a horsepower rating of 25 hp or greater, but less than 50 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2003, 6.3 g/hp-hr; and

(II) on or after October 1, 2003, 5.0 g/hp-hr;

(iv) with a horsepower rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2003, 6.9 g/hp-hr;

(II) on or after October 1, 2003, but before October 1, 2007, 5.0 g/hp-hr; and

(III) on or after October 1, 2007, 3.3 g/hp-hr;

(v) with a horsepower rating of 100 hp or greater, but less than 175 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;

(II) on or after October 1, 2002, but before October 1, 2006, 4.5 g/hp-hr; and

(III) on or after October 1, 2006, 2.8 g/hp-hr;

(vi) with a horsepower rating of 175 hp or greater, but less than 300 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;

(II) on or after October 1, 2002, but before October 1, 2005, 4.5 g/hp-hr; and

(III) on or after October 1, 2005, 2.8 g/hp-hr;

(vii) with a horsepower rating of 300 hp or greater, but less than 600 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and

(II) on or after October 1, 2005, 2.8 g/hp-hr;

(viii) with a horsepower rating of 600 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and

(II) on or after October 1, 2005, 2.8 g/hp-hr; and

(ix) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 6.9 g/hp-hr; and

(II) on or after October 1, 2005, 4.5 g/hp-hr;

(10) stationary gas turbines:

(A) rated at 10.0 megawatts (MW) or greater, 0.032 lb/MMBtu;

(B) rated at 1.0 MW or greater, but less than 10.0 MW, 0.15 lb/MMBtu; and

(C) rated at less than 1.0 MW, 0.26 lb/MMBtu;

(11) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (10) of this subsection;

(12) pulping liquor recovery furnaces, either:

(A) 0.050 lb/MMBtu; or

(B) 1.08 pounds per air-dried ton of pulp;

(13) kilns:

(A) lime kilns, 0.66 pounds per ton of calcium oxide; and

(B) lightweight aggregate kilns, 1.25 pounds per ton of product;

(14) metallurgical furnaces:

(A) heat treating furnaces, 0.087 lb/MMBtu; and

(B) reheat furnaces, 0.062 lb/MMBtu;

(15) magnesium chloride fluidized bed dryers, a 90% reduction from the emission factor used to calculate the 1997 ozone season daily NO_x emissions;

(16) incinerators, either of the following:

(A) an 80% reduction from the emission factor used to calculate the June - August 1997 daily NO_x emissions. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology must be used to calculate the 80% reduction; or

(B) 0.030 lb/MMBtu; and

(17) as an alternative to the emission specifications in paragraphs (1) - (16) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu. For units placed into service on or before January 1, 1997, the 1997 - 1999 average annual capacity factor must be used to determine whether the unit is eligible for the emission specification of this paragraph. For units placed into service after January 1, 1997, the annual capacity factor must be calculated from two consecutive years in the first five years of operation to determine whether the unit is eligible for the emission specification of this paragraph, using the same two consecutive years chosen for the activity level baseline. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions).

(b) NO_x averaging time. The averaging time for the emission specifications of subsection (a) of this section must be as specified in Chapter 101, Subchapter H, Division 3 of this title, except that electric generating facilities (EGFs) must also comply with the daily and 30-day system cap emission limitations of §117.320 of this title (relating to System Cap).

(c) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to subsection (a) of this section, emissions in excess of the following, except as provided in §117.325 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) CO emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), gas-fired lean-burn engines, and lightweight aggregate kilns; 0.0% O_2, dry, for fluid catalytic cracking units (including CO boilers, CO furnaces, and catalyst regenerator vents); 7.0% O_2, dry, for BIF units that were regulated as existing facilities in 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993), wood-fired boilers, and incinerators; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to the following units:

(A) lightweight aggregate kilns; and

(B) boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO limits in paragraph (1) of this subsection do not apply to the following units:

(A) BIF units that were regulated as existing facilities in 40 CFR Part 266, Subpart H (as was in effect on June 9, 1993) and that are subject to subsection (a)(3) of this section; and

(B) incinerators subject to the CO limits of one of the following:

(i) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(ii) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or

(iii) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

(d) Compliance flexibility.

(1) Section 117.325 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(2) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.325 of this title.

(3) An owner or operator may not use the alternative methods specified in §§117.315, 117.323, and 117.9800 of this title (relating to Alternative Plant-Wide Emission Specifications; Source Cap; and Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section. The owner or operator shall use the mass emissions cap and trade program in Chapter 101, Subchapter H, Division 3 of this title to comply with the NO_x emission specifications of this section, except that electric generating facilities must also comply with the daily and 30-day system cap emission limitations of §117.320 of this title. An owner or operator may use the alternative methods specified in §117.9800 of this title for purposes of complying with §117.320 of this title.

(e) Prohibition of circumvention:

(1) the maximum rated capacity used to determine the applicability of the emission specifications in subsection (a) of this section and the initial control plan, compliance demonstration, monitoring, testing requirements, and final control plan in §§117.335, 117.340, 117.350, and 117.354 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) must be:

(A) the greater of the following:

(i) the maximum rated capacity as of December 31, 2000; or

(ii) the maximum rated capacity after December 31, 2000; or

(B) alternatively, the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001, provided that the maximum rated capacity authorized by the permit issued on or after January 2, 2001, is no less than the maximum rated capacity represented in the permit application as of January 2, 2001;

(2) a unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a boiler as of December 31, 2000, but subsequently is authorized to operate as a BIF unit, is classified as a boiler for the purposes of this chapter. In another example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter;

(3) changes after December 31, 2000, to a unit subject to subsection (a) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to subsection (a) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity of less than 40 MMBtu/hr or a flare, is only allowed if:

(A) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.340(f) or (g) of this title, or through stack testing that meets the requirements of §117.335(e) of this title; and

(B) a deduction in allowances equal to the increase in NO_x emissions at the non-ESAD unit is made as specified in §101.354 of this title (relating to Allowance Deductions);

(4) a source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but at any time after December 31, 2000, becomes a major source, is from that time forward always classified as a major source for purposes of this chapter; and

(5) the availability under subsection (a)(17) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(17) of this section than would otherwise apply to the unit.

(f) Operating restrictions. No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.315. Alternative Plant-Wide Emission Specifications.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or §117.310 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO_x emission reductions obtained by compliance with a plant-wide emission specification. Any owner or operator who elects to comply with a plant-wide emission specification shall reduce emissions of NO_x from affected units so that if all such units were operated at their maximum rated capacity, the plant-wide emission rate of NO_x from these units would not exceed the plant-wide emission specification as defined in §117.10 of this title (relating to Definitions).

(b) The owner or operator shall establish an enforceable NO_x emission limit for each affected unit at the source as follows.

(1) For boilers and process heaters that operate with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) in accordance with §117.340 of this title (relating to Continuous Demonstration of Compliance), the emission specifications apply in:

(A) the units of the applicable standard (the mass of NO_x emitted per unit of energy input (pounds per million British thermal units (lb/MMBtu) or parts per million by volume (ppmv)), on a rolling 30-day average period; or

(B) as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(2) For boilers and process heaters that do not operate with CEMS or PEMS, the emission specifications apply as the mass of NO_x emitted per hour (pounds per hour), on a block one-hour average.

(3) For stationary gas turbines, the emission specifications apply as the NO_x concentration in ppmv at 15% oxygen (O_2), dry basis on a block one-hour average.

(4) For stationary internal combustion engines, the NO_x emission specifications apply in units of grams per horsepower-hour (g/hp-hr) on a block one-hour average.

(c) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from gaseous fuel shall use only the appropriate gaseous fuel emission limit of §117.305 or §117.310 of this title at maximum rated capacity in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate while firing gas, calculated in accordance with subsection (a) of this section. The owner or operator shall also:

(1) comply with the assigned maximum allowable emission rate while firing gas only;

(2) comply with the liquid fuel emission limit of §117.305 of this title while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing allowable emission rate and the liquid fuel emission limit of §117.305 of this title while operating on liquid and gaseous fuel concurrently.

(d) An owner or operator of any gaseous and liquid fuel-fired unit that derives more than 50% of its annual heat input from liquid fuel shall use a heat input weighted sum of the appropriate gaseous and liquid fuel emission specifications of §117.305 or §117.310 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(e) An owner or operator of any unit operated with a combination of gaseous (or liquid) and solid fuels shall use a heat input weighted sum of the appropriate emission specifications of §117.305 of this title in calculating the plant-wide emission specification and shall assign to the unit the maximum allowable NO_x emission rate, calculated in accordance with subsection (a) of this section.

(f) Units exempted from emission specifications in accordance with §117.303(b) of this title (relating to Exemptions) are also exempt under this section and must not be included in the plant-wide emission specification, except as follows. The owner or operator of exempted units as defined in §117.303(b) of this title may opt to include one or more of an entire equipment class of exempted units into the alternative plant-wide emission specifications.

(1) Low annual capacity factor boilers, process heaters, stationary gas turbines, or stationary internal combustion engines as defined in §117.10 of this title are not to be considered as part of the opt-in class of equipment.

(2) The ammonia and carbon monoxide (CO) emission specifications of §117.305 or §117.310 of this title apply to the opt-in units.

(3) The individual NO_x emission limit that is to be used in calculating the alternative plant-wide emission specifications is the lowest of any applicable permit emission specification determined in accordance with §117.305(a) of this title or the specification of paragraph (4) of this subsection.

(4) The equipment classes that may be included in the alternative plant-wide emission specifications and the NO_x emission rates that are to be used in calculating the alternative plant-wide emission specifications are listed in the table titled §117.315(f) OPT-IN UNITS.
Figure: 30 TAC §117.315(f)(4)

(g) Solely for the purposes of calculating the plant-wide emission specification, the allowable NO_x emission rate (in pounds per hour) for each affected unit must be calculated from the emission specifications of §117.305 of this title, as follows.

(1) For each affected boiler and process heater, the rate is determined by the following equation.
Figure: 30 TAC §117.315(g)(1)

(2) For each affected stationary internal combustion engine, the rate is determined by the following equation.
Figure: 30 TAC §117.315(g)(2)

(3) For each affected stationary gas turbine, the rate is determined by the following equations.
Figure: 30 TAC §117.315(g)(3)

(4) Each affected gas-fired boiler and process heater firing gaseous fuel that contains more than 50% hydrogen (H_2) by volume, on an annual basis, may be adjusted with a multiplier of up to 1.25 times the product of its maximum rated capacity and its NO_x emission specification of §117.305 of this title.

(A) Double application of the H_2 content multiplier using this paragraph and §117.305(b)(6) of this title is not allowed.

(B) The multiplier may not be used to increase a limit set by permit.

(C) The fuel gas composition must be sampled and analyzed every three hours.

(D) This paragraph is not applicable for establishing compliance with §117.310 of this title.

(h) The owner or operator of any gas-fired boiler or process heater firing gaseous fuel that contains more than 50% H_2 by volume, over an eight-hour period, in which the fuel gas composition is sampled and analyzed every three hours, may use a multiplier of up to 1.25 times the emission limit assigned to the unit in this section for that eight-hour period. The total H_2 volume in all gaseous fuel streams will be divided by the total gaseous fuel flow volume to determine the volume percent of H_2 in the fuel supply. This subsection is not applicable to:

(1) units under subsection (g)(4) of this section;

(2) increase limits set by permit; or

(3) establish compliance with §117.310 of this title.

(i) This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9020(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources). For purposes of this subsection, this means that the alternative plant-wide emission specifications of this section remain in effect until the emissions allocation for units under the Houston-Galveston-Brazoria mass emissions cap are equal to or less than the allocation that would be calculated using the alternative plant-wide emission specifications of this section.

§117.320. System Cap.

(a) The owner or operator of any electric generating facility (EGF) shall comply with a daily and 30-day system cap emission limitation for nitrogen oxides (NO_x) in accordance with the requirements of this section. Each EGF in the system cap must be subject to the daily cap and appropriate 30-day cap of this section at all times. An EGF is not subject to this section if electric output is entirely dedicated to industrial customers. "Entirely dedicated" may include up to two weeks per year of service to the electric grid when the industrial customers' load sources are not operating. Alternatively, an EGF that generates electricity primarily for internal use, but that during 1997 and all subsequent calendar years transferred (or will transfer) that generated electricity to a utility power distribution system at a rate less than 3.85% of its actual electrical generation is not subject to the requirements of this section.

(b) Each EGF that is subject to §117.310 of this title (relating to Emission Specifications for Attainment Demonstration) must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap applicable during the months of July, August, and September must be calculated using the following equation.
Figure: 30 TAC §117.320(c)(1)

(2) A rolling 30-day average emission cap applicable during all months other than July, August, and September must be calculated using the following equation.
Figure: 30 TAC §117.320(c)(2)

(3) A maximum daily cap must be calculated using the following equation.
Figure: 30 TAC §117.320(c)(3)

(d) The NO_x emissions monitoring required by §117.340 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(1) if the NO_x monitor is a continuous emissions monitoring system (CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) 75, use the missing data procedures specified in 40 CFR 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR 75, Appendix E, use the missing data procedures specified in 40 CFR 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.1240(e) of this title (relating to Continuous Demonstration of Compliance);

(3) if the NO_x monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator of any EGF subject to a system cap shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.345 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any EGF subject to a system cap shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.345 of this title.

(h) The owner or operator of any EGF subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 2000. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO_x monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

§117.323. Source Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission limits of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission limits of §117.305 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap must comply with the requirements of §117.305 or §117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Alternative Plant-Wide Emission Specifications).

(b) The source cap allowable mass emission rate must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.323(b)(1)

(2) A maximum daily cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.323(b)(2)

(3) Each emission unit included in the source cap must be subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) The owner or operator at its option may include any of the entire classes of exempted units listed in §117.315(f) of this title in a source cap. For compliance with §117.305(a) - (d) of this title, such units are required to reduce emissions available for use in the cap by an additional amount calculated in accordance with the United States Environmental Protection Agency's proposed Economic Incentive Program rules for offset ratios for trades between RACT and non-RACT sources, as published in the February 23, 1993, *Federal Register* (58 FR 11110).

(5) For stationary internal combustion engines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.315(g)(2) of this title.

(6) For stationary gas turbines, the source cap allowable emission rate must be calculated in pounds per hour using the procedures specified in §117.315(g)(3) of this title.

(c) The owner or operator who elects to comply with this section shall:

(1) for each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.340 of this title

(relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and must be used to demonstrate continuous compliance with the source cap;

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.340 of this title. The required PEMS and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and must be used to demonstrate continuous compliance with the source cap; or

(C) for units not subject to continuous monitoring requirements and units belonging to the equipment classes listed in §117.315(f) of this title, the owner or operator may use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.335(e) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units are limited to the maximum emission rates obtained from testing conducted under §117.335(e) of this title; and

(2) for each operating unit equipped with CEMS, the owner or operator shall either use a PEMS in accordance with §117.340 of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.335(e) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 CFR §75.46 must be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records must also be retained in accordance with §117.345 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.345 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.9020(1) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(g) For compliance with §117.305(a) - (d) of this title by November 15, 1999, a unit that has operated since November 15, 1990, and has since been permanently retired or decommissioned and rendered inoperable prior to June 9, 1993, may be included in the source cap emission limit under the following conditions.

(1) The unit must have actually operated since November 15, 1990.

(2) For purposes of calculating the source cap emission limit, the applicable emission limit for retired units must be calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 1990, and June 9, 1993, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, plus one standard deviation of the average daily heat input for that period. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from shutdowns or curtailments that have not been used for netting or offset purposes under the requirements of Chapter 116 of this title or have not resulted from any other state or federal requirement may be included in the baseline for establishing the cap.

(h) A unit that has been shut down and rendered inoperable after June 9, 1993, but not permanently retired, should be identified in the initial control plan and may be included in the source cap to comply with the NO_x emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) required by November 15, 1999.

(i) An owner or operator who chooses to use the source cap option shall include in the initial control plan, if required to be filed under §117.350 of this title (relating to Initial Control Plan Procedures), a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the initial control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in subsection (b)(1) of this section. An owner or operator who chooses to use the source cap option shall include in the final control plan procedures of §117.352 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology) the information necessary under this section to demonstrate initial compliance with the source cap.

(j) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the executive director that actual emissions were less than maximum emissions during such periods.

(k) This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9020(2) of this title. For purposes of this paragraph, this means that the source cap of this section remains in effect until the emissions allocation for units under the Houston-Galveston-Brazoria mass emissions cap are equal to or less than the allocation that would be calculated using the source cap of this section.

§117.325. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) or the carbon monoxide (CO) or ammonia specifications of §117.310(c) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.305 of this title or the CO or ammonia specifications in §117.310(c) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.305 or §117.310 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

§117.330. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) in compliance with those limitations.

(b) The owner or operator shall operate any unit subject to the plant-wide emission specification of §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications) such that the assigned maximum nitrogen oxides (NO_x) emission rate for each unit expressed in units of the applicable emission limit and averaging period, is in accordance with the list approved by the executive director pursuant to §117.352 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(c) The owner or operator shall operate any unit subject to the source cap emission limits of §117.323 of this title (relating to Source Cap) in compliance with those limitations.

(d) All units subject to the emission limitations of §§117.305, 117.315, or 117.323 of this title must be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O_2 on a dry basis for stationary gas turbines).

(5) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(7) Each stationary internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.335. Initial Demonstration of Compliance.

(a) The owner or operator of any unit subject to §117.305 or §117.310 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); and Emission Specifications for Attainment Demonstration) shall test the unit as follows.

(1) The unit must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen emissions while firing gaseous fuel or, as applicable:

(A) hydrogen (H_2) fuel for units that may fire more than 50% H_2 by volume; and

(B) liquid and solid fuel.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) All units must be tested that belong to equipment classes elected to be included in:

(A) the alternative plant-wide emission specifications as defined in §117.315(f) of this title (relating to Alternative Plant-Wide Emission Specifications); or

(B) the source cap as defined in §117.323(b)(4) of this title (relating to Source Cap).

(4) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (e) or (f) of this section and must be used for determination of initial compliance with the requirements of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources). Test results must be reported in the units of the applicable emission specification and averaging periods.

(c) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.340 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, as a minimum, include completion of the initial relative accuracy test audit and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Early testing conducted before March 21, 1999, may be used to demonstrate compliance with the requirements of this division, if the owner or operator of an affected facility demonstrates to the executive director that the prior compliance testing at least meets the requirements of subsections (a), (b), (c), (e), and (f) of this section. For

early testing, the compliance stack test report required by subsection (g) must be as complete as necessary to demonstrate to the executive director that the stack test was valid and the source has complied with the rule. The executive director reserves the right to request compliance testing or CEMS or PEMS performance evaluation at any time.

(e) Compliance with the requirements of this division for units operating without CEMS or PEMS must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).

(f) Initial compliance with the requirements of this division for units operating with CEMS or PEMS in accordance with §117.340 of this title, must be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a NO_x emission specification in pounds per million British thermal units on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable is used to determine compliance with the NO_x emission specification.

(3) For units complying with a CO emission specification, on a rolling 24-hour average, any 24-hour period is used to determine compliance with the CO emission specification.

(4) For units complying with §117.323 of this title, a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.323(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(g) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.340. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ±5% accuracy required as soon as practicable but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following:

(A) for units that are subject to §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), for stationary gas turbines that are exempt under §117.303(b)(7) of this title (relating to Exemptions):

(i) if individually rated more than 40 million British thermal units per hour (MMBtu/hr):

(I) boilers;

(II) process heaters;

(III) boilers and industrial furnaces that were regulated as existing facilities by 40 Code of Federal Regulations (CFR) Part 266, Subpart H, as was in effect on June 9, 1993; and

(IV) gas turbine supplemental-fired waste heat recovery units;

(ii) stationary, reciprocating internal combustion engines not exempt by §117.303(a)(6), (a)(8), (b)(9), or (b)(10) of this title;

(iii) stationary gas turbines with a megawatt (MW) rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(iv) fluid catalytic cracking unit boilers using supplemental fuel; and

(B) for units subject to §117.310 of this title (relating to Emission Specifications for Attainment Demonstration):

(i) boilers (excluding wood-fired boilers that must comply by maintaining records of fuel usage as required in §117.345(f) of this title (relating to Notification, Recordkeeping, and Reporting Requirements) or monitoring in accordance with paragraph (2)(A) of this subsection);

(ii) process heaters;

(iii) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993;

(iv) duct burners used in turbine exhaust ducts;

(v) stationary, reciprocating internal combustion engines;

(vi) stationary gas turbines;

(vii) fluid catalytic cracking unit boilers and furnaces using supplemental fuel;

(viii) lime kilns;

(ix) lightweight aggregate kilns;

(x) heat treating furnaces;

(xi) reheat furnaces;

(xii) magnesium chloride fluidized bed dryers; and

(xiii) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection.)

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 MMBtu/hr; and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except as provided in subsection (g) of this section.

(2) The following are not subject to this subsection:

(A) units listed in §117.303(b)(3) - (5) and (8) - (10) of this title;

(B) process heaters operating with a carbon dioxide CEMS for diluent monitoring under subsection (g) of this section; and

(C) wood-fired boilers.

(3) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) boilers with a rated heat input greater than or equal to 250 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(B) process heaters with a rated heat input greater than or equal to 200 MMBtu/hr and an annual heat input greater than $2.2(10^{11})$ Btu/yr;

(C) stationary gas turbines with an MW rating greater than or equal to 30 MW operated more than 850 hours per year;

(D) units that use a chemical reagent for reduction of NO_x;

(E) units that the owner or operator elects to comply with the NO_x emission specifications of §117.305 of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;

(F) lime kilns and lightweight aggregate kilns;

(G) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.310(a) of this title; and

(H) fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents). In addition, the owner or operator shall monitor the stack exhaust flow rate with a flow meter using the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(2) The following are not required to install CEMS or PEMS under this subsection:

(A) for purposes of §117.305 of this title, units listed §117.303(b)(3) - (5) and (8) - (10) of this title; and

(B) units subject to the NO_x CEMS requirements of 40 CFR Part 75.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) use the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.335(f) of this title (relating to Initial Demonstration of Compliance); or

(E) use the following procedures:

(i) for NO_x monitor downtime periods less than 24 consecutive hours, use the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 24 operational hours of the unit;

(ii) for NO_x monitor downtime periods equal to or greater than 24 consecutive hours, use the maximum block one-hour NO_x emission rate, in lb/MMBtu, from the previous 720 operational hours of the unit; and

(iii) if the fuel flow or stack exhaust flow monitor required by subsection (a) of this section is off-line simultaneous with the NO_x monitor downtime, the owner or operator shall use the maximum block one-hour NO_x pound per hour emission rate for the substitute data under clause (i) or (ii) of this subparagraph in lieu of the lb/MMBtu emission rate.

(d) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specifications of §117.310(c)(2) of this title shall comply with the ammonia monitoring

requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(e) CO monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The CEMS must meet the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(2) For units subject to §117.310 of this title:

(A) all bypass stacks must be monitored, in order to quantify emissions directed through the bypass stack:

(i) if the CEMS is located upstream of the bypass stack, then:

(I) no effluent streams from other potential sources of NO_x emissions may be introduced between the CEMS and the bypass stack; and

(II) the owner or operator shall install, operate, and maintain a continuous monitoring system to automatically record the date, time, and duration of each event when the bypass stack is open; and

(ii) process knowledge and engineering calculations may be used to determine volumetric flow rate for purposes of calculating mass emissions for each event when the bypass stack is open, provided that:

(I) the maximum potential calculated flow rate is used for emission calculations; and

(II) the owner or operator maintains, and makes available upon request by the executive director, records of all process information and calculations used for this determination; and

(B) exhaust streams of units that vent to a common stack do not need to be analyzed separately.

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(h) Engine monitoring. The owner or operator of any stationary gas engine subject to §117.305 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines). The owner or operator of any stationary internal combustion engine subject to §117.310 of this title that is not equipped with NO_x CEMS or PEMS shall stack test engine NO_x and CO emissions as specified in §117.8140(a) and (b) of this title.

(i) Monitoring for stationary gas turbines less than 30 MW. The owner or operator of any stationary gas turbine rated less than 30 MW using steam or water injection to comply with the emission specifications of §117.305 or §117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT) and Alternative Plant-Wide Emission Specifications) shall either:

(1) install, calibrate, maintain, and operate a NO_x CEMS or PEMS in compliance with this section and monitor CO in compliance with subsection (e) of this section; or

(2) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption:

(A) the system must be accurate to within ±5.0%;

(B) the steam-to-fuel or water-to-fuel ratio monitoring data must constitute the method for demonstrating continuous compliance with the applicable emission specification of §117.305 or §117.315 of this title; and

(C) steam or water injection control algorithms are subject to executive director approval.

(j) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.303(a)(6)(D), (a)(10), (a)(11), (b)(2) or (b)(9) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

(k) Hydrogen (H_2) monitoring. The owner or operator claiming the H_2 multiplier of §117.305(b)(6) or §117.315(g)(4) or (h) of this title shall sample, analyze, and record every three hours the fuel gas composition to determine the volume percent H_2.

(1) The total H_2 volume flow in all gaseous fuel streams to the unit must be divided by the total gaseous volume flow to determine the volume percent of H_2 in the fuel supply to the unit.

(2) Fuel gas analysis must be tested according to American Society for Testing and Materials (ASTM) Method D1945-81 or ASTM Method D2650-83, or other methods that are demonstrated to the satisfaction of the executive director and the United States Environmental Protection Agency to be equivalent.

(3) A gaseous fuel stream containing 99% H_2 by volume or greater may use the following procedure to be exempted from the sampling and analysis requirements of this subsection.

(A) A fuel gas analysis must be performed initially using one of the test methods in this subsection to demonstrate that the gaseous fuel stream is 99% H_2 by volume or greater.

(B) The process flow diagram of the process unit that is the source of the H_2 must be supplied to the executive director to illustrate the source and supply of the hydrogen stream.

(C) The owner or operator shall certify that the gaseous fuel stream containing H_2 will continuously remain, as a minimum, at 99% H_2 by volume or greater during its use as a fuel to the combustion unit.

(l) Data used for compliance.

(1) After the initial demonstration of compliance required by §117.335 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.305 of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(2) For units subject to §117.310(a) of this title, the methods required in this section must be used in conjunction with the re-

quirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) to determine compliance. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission limitations.

(m) Enforcement of NO_x RACT limits. If compliance with §117.305 of this title is selected, no unit subject to §117.305 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.305 of this title. If compliance with §117.315 of this title is selected, no unit subject to §117.315 of this title may be operated at an emission rate higher than that approved by the executive director under §117.352(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(n) Loss of NO_x RACT exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.303(b)(2) of this title shall notify the executive director within seven days if the Btu/yr or hour-per-year limit specified in §117.10 of this title (relating to Definitions), as appropriate, is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(o) Testing and operating requirements. The owner or operator of units that are subject to §117.310(a) of this title shall comply with the following.

(1) The owner or operator of units that are subject to §117.310(a) of this title shall test the units as specified in §117.335 of this title in accordance with the schedule specified in §117.9020(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(2) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(p) Emission allowances. The owner or operator of units that are subject to §117.310(a) of this title shall comply with the following.

(1) The NO_x testing and monitoring data of subsections (a), (c), (f), (g), and (o) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor for calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program.

(2) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in subsection (o)(1) of this section is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in subsection (o)(1) of this section may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting must be used to establish a new emission factor to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(D) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(3) The emission factor in paragraph (1) or (2) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

§117.345. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.335 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.340 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.335 of this title and any CEMS or PEMS RATA conducted under §117.340 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system under §117.340 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) and the monitoring system performance. For sources in the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of

this title (relating to Mass Emissions Cap and Trade Program), that are no longer subject to §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), the report is only a monitoring system report as specified in paragraph (3) of this subsection. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.340(i)(2) of this title, excess emissions are computed as each one-hour period that the average steam or water injection rate is below the level defined by the control algorithm as necessary to achieve compliance with the applicable emission specifications in §117.305 of this title; and

(B) for units complying with §117.323 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS, PEMS, or water-to-fuel or steam-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to §§117.305, 117.310, or 117.315 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative Plant-Wide Emission Specifications) shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.330(d)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.340(h) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.340(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.340 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a block one-hour average;

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission limit enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pound per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day; or

(C) daily emissions and fuel usage (or stack exhaust flow) for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title. Emissions must be recorded in units of:

(i) lb/MMBtu heat input or in the units of the applicable emission specification in §117.310(a) of this title; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.330(d)(7) of this title; and

(ii) §117.340(h) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for each stationary gas turbine monitored by steam-to-fuel or water-to-fuel ratio in accordance with §117.340(i) of this title, records of hourly:

(A) pounds of steam or water injected;

(B) pounds of fuel consumed; and

(C) the steam-to-fuel or water-to-fuel ratio;

(5) for hydrogen (H_2) fuel monitoring in accordance with §117.340(k) of this title, records of the volume percent H_2 every three hours;

(6) for units claimed exempt from emission specifications using the exemption of §117.303(a)(6)(D), (a)(10), (a)(11), or (b)(2) of this title (relating to Exemptions), either records of monthly:

(A) fuel usage, for exemptions based on heat input; or

(B) hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.303(a)(6)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(7) records of carbon monoxide measurements specified in §117.340(e) of this title;

(8) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems;

(9) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.335 of this title;

(10) for each stationary diesel or dual-fuel engine, records of each time the engine is operated for testing and maintenance, including:

(A) date(s) of operation;

(B) start and end times of operation;

(C) identification of the engine; and

(D) total hours of operation for each month and for the most recent 12 consecutive months; and

(11) for units subject to the ammonia monitoring requirements of §117.340(d) of this title, records that are sufficient to demonstrate compliance with the requirements of §117.8130 of this title (relating to Ammonia Monitoring). For the sorbent or stain tube option, these records must include the ammonia injection rate and NO_x stack emissions measured during each sorbent or stain tube test.

§117.350. Initial Control Plan Procedures.

(a) The owner or operator of any major source of nitrogen oxides (NO_x) shall submit, for the approval of the executive director, an initial control plan for installation of NO_x emissions control equipment (if required in order to comply with the emission specifications of this subchapter) and demonstration of anticipated compliance with the applicable requirements of this subchapter.

(1) This section applies only to sources that were major for NO_x emissions before November 15, 1992.

(2) The executive director shall approve the plan if it contains all the information specified in this section.

(3) Revisions to the initial control plan must be submitted with the final control plan.

(b) The owner or operator shall provide results of emissions testing using portable or reference method analyzers or, as available, initial demonstration of compliance testing conducted in accordance with §117.335(e) or (f) of this title (relating to Initial Demonstration of Compliance) for NO_x, carbon monoxide (CO), and oxygen emissions while firing gaseous fuel (and as applicable, hydrogen (H_2) fuel for units that may fire more than 50% H_2 by volume) and liquid and/or solid fuel at the maximum rated capacity or as near thereto as practicable, for the units listed in this subsection. Previous testing documentation for any claimed test waiver as allowed by §117.335(d) of this title must be submitted with the initial control plan. Any units that were not operated between June 9, 1993, and April 1, 1994, and do not have earlier representative emission test results available, must be tested and the results submitted to the executive director, with certification of the equipment's shutdown period, within 90 days after the date such equipment is returned to operation. Test results are required for the following units:

(1) boilers and process heaters with a maximum rated capacity greater than or equal to 40 million British thermal units per hour (MMBtu/hr), except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title (relating to Definitions);

(2) boilers and industrial furnaces with a maximum rated capacity greater than or equal to 40 MMBtu/hr that were regulated as existing facilities by 40 Code of Federal Regulations, Part 266, Subpart H, as was in effect on June 9, 1993, except for low annual capacity factor boilers and process heaters as defined in §117.10 of this title;

(3) fluid catalytic cracking units with a maximum rated capacity greater than or equal to 40 MMBtu/hr;

(4) gas turbine supplemental waste heat recovery units with a maximum rated fired capacity greater than or equal to 40 MMBtu/hr, except for low annual capacity factor gas turbine supplemental waste heat recovery units as defined in §117.10 of this title;

(5) stationary gas turbines with a megawatt (MW) rating of greater than or equal to 1.0 MW, except for low annual capacity factor gas turbines or peaking gas turbines as defined in §117.10 of this title; and

(6) gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower (hp) or greater, except for low annual capacity factor engines or peaking engines as defined in §117.10 of this title.

(c) The initial control plan must be submitted by April 1, 1994, and must contain the following:

(1) a list of all combustion units at the source with a maximum rated capacity greater than 5.0 MMBtu/hr; all stationary, reciprocating internal combustion engines rated 150 hp or greater; all stationary gas turbines with an MW rating of greater than or equal to 1.0 MW; the maximum rated capacity, anticipated annual capacity factor, the facility identification numbers and emission point numbers as submitted to the Industrial Emissions Assessment Section of the commission; and the emission point numbers as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit for each unit;

(2) identification of all units subject to the emission specifications of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications), or §117.323 of this title (relating to Source Cap);

(3) identification of all boilers, process heaters, stationary gas turbines, or engines with a claimed exemption from the emission specifications of §117.305 or §117.315 of this title and the rule basis for the claimed exemption;

(4) identification of the election to use individual emission limits as specified in §117.305 of this title, the plant-wide emission specification as specified in §117.315 of this title, or the source cap emission limit as specified in §117.323 of this title to achieve compliance with this rule;

(5) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(6) a list of units requiring operating modifications to comply with §117.330(d) of this title (relating to Operating Requirements) and the type of modification to be applied for all such units, including an anticipated construction schedule;

(7) a list of any units that have been or will be retired, decommissioned, or shutdown and rendered inoperable after November 15, 1990, as a result of compliance with §117.305 of this title, indicating the date of occurrence or anticipated date of occurrence;

(8) the basis for calculation of the rate of NO_x emissions for each unit to demonstrate that each unit will achieve the NO_x emission rates specified in this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources). For fluid catalytic cracking unit CO boilers, the basis for calculation of the NO_x emission rate in pounds per million British thermal units (lb/MMBtu) for each unit must include the following:

(A) the calculation of the CO boiler heat input;

(B) the calculation of the appropriate CO boiler volumetric inlet and exhaust flowrates; and

(C) the calculation of the CO boiler NO_x emission rate in lb/MMBtu;

(9) for units required to install totalizing fuel flow meters in accordance with §117.340(a) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter;

(10) for units that have had NO_x reduction projects as specified in §117.305(a)(1)(B) of this title, documentation that such projects were undertaken solely for the purpose of obtaining early NO_x reductions; and

(11) test results in accordance with subsection (b) of this section.

§117.352. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.300 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of the units listed in §117.300 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.305 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.305 of this title;

(B) §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications);

(C) §117.323 of this title (relating to Source Cap);

(D) §117.325 of this title (relating to Alternative Case Specific Specifications); or

(E) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of NO_x control for each unit;

(4) the emissions measured by testing required in §117.335 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.335 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources), for:

(A) boilers and heaters with a maximum rated capacity greater than or equal to 100.0 million British thermal units per hour;

(B) gas turbines with a megawatt (MW) rating greater than or equal to 10.0 MW; and

(C) gas-fired internal combustion engines rated greater than or equal to 150 horsepower.

(b) For sources complying with §117.315 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected:

(A) boiler or process heater, the maximum allowable NO_x emission rate in pounds per million British thermal units (rolling 30-day average), or in pounds per hour (block one-hour average) indicating whether the fuel is gas, high-hydrogen gas, solid, or liquid;

(B) stationary gas turbine, the maximum allowable NO_x emission in parts per million by volume at 15% oxygen, dry basis on a block one-hour average; and

(C) stationary internal combustion engine, the maximum allowable NO_x emission rate in grams per horsepower-hour on a block one-hour average;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the plant-wide average in accordance with §117.315(g) of this title; and

(4) maintain a copy of the approved list of emission specifications for verification of continued compliance with the requirements of §117.315 of this title.

(c) For sources complying with §117.323 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates; and

(2) a list containing, for each unit in the cap:

(A) the historical average daily heat input information, H_i;

(B) the maximum daily heat input, H_{mi};

(C) the applicable restriction, R_i; and

(D) the method of monitoring emissions;

(3) an explanation of the basis of the values of H_i, H_{mi}, and R_i; and

(4) the information applicable to shutdown units, specified in §117.323(g) of this title.

(d) The report must be submitted by the applicable date specified for final control plans in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission limit on a rolling 30-day average, according to the applicable schedule given in §117.9020 of this title.

§117.354. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of units listed in §117.310(a) of this title (relating to Emission Specifications for Attainment Demonstration) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.310 of this title. The report must include:

(1) the section under which NO_x compliance is being established, either:

(A) Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program); and, where applicable, §117.320 of this title (relating to System Cap); or

(B) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.335 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.335 of this title that is not being submitted concurrently with the final compliance report;

(5) the specific rule citation for any unit with a claimed exemption from §117.310 of this title; and

(6) for sources complying with §117.320 of this title, in addition to the requirements of paragraphs (1) - (5) of this subsection, the owner or operator shall submit:

(A) the calculations used to calculate the 30-day average and maximum daily system cap allowable emission rates;

(B) a list containing, for each unit in the cap:

(i) the average daily heat input, H_i, specified in §117.320(c)(1) and (2) of this title;

(ii) the maximum daily heat input, H_{mi}, specified in §117.320(c)(3) of this title;

(iii) the method of monitoring emissions; and

(iv) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(C) an explanation of the basis of the values of H_i and H_{mi}.

(b) The report must be submitted to the executive director by the applicable date specified for final control plans in §117.9020 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the system cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9020 of this title.

§117.356. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the requirements and the final compliance dates of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources).

(1) For sources complying with §117.305 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), §117.310 of this title (relating to Emission Specifications for Attainment Demonstration), or §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications), replacement new units may be included in the control plan.

(2) For sources complying with §117.323 of this title (relating to Source Cap), any new unit must be included in the source cap, if the unit belongs to an equipment category that is included in the source cap.

(3) The revision of the final control plan must be subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Director, Environmental Law Division
Texas Commission on Environmental Quality
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DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MAJOR SOURCES

30 TAC §§117.400, 117.403, 117.410, 117.423, 117.425, 117.430, 117.435, 117.440, 117.445, 117.450, 117.454, 117.456

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records,

which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.400. Applicability.

The provisions of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), apply to the following units located at any major stationary source of nitrogen oxides located within the Dallas-Fort Worth eight-hour ozone nonattainment area:

(1) industrial, commercial, or institutional boilers and process heaters;

(2) stationary gas turbines;

(3) stationary internal combustion engines;

(4) duct burners used in turbine exhaust ducts;

(5) lime kilns;

(6) metallurgical heat treating furnaces and reheat furnaces;

(7) incinerators;

(8) glass, fiberglass, and mineral wool melting furnaces;

(9) fiberglass and mineral wool curing and forming ovens;

(10) natural gas-fired ovens and heaters;

(11) natural gas-fired organic solvent, printing ink, clay, brick, ceramic tile, calcining, and vitrifying dryers;

(12) brick and ceramic kilns;

(13) electric arc melting furnaces used in steel production; and

(14) lead smelting reverberatory and blast (cupola) furnaces.

§117.403. Exemptions.

(a) Units exempted from the provisions of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), except as specified in §§117.440(i), 117.445(f)(4) and (9), 117.450, and 117.454 of this title (relating to Continuous Demonstration of Compliance; Notification, Recordkeeping, and Reporting Requirements; Initial Control Plan Procedures; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications), include the following:

(1) industrial, commercial, or institutional boilers or process heaters with a maximum rated capacity of 2.0 million British thermal units per hour (MMBtu/hr) or less;

(2) heat treating furnaces and reheat furnaces with a maximum rated capacity less than 20 MMBtu/hr;

(3) flares, incinerators with a maximum rated capacity less than 40 MMBtu/hr, pulping liquor recovery furnaces, sulfur recovery units, sulfuric acid regeneration units, molten sulfur oxidation furnaces, and sulfur plant reaction boilers;

(4) dryers, heaters, or ovens with a maximum capacity of 2.0 MMBtu/hr or less;

(5) any dryers, heaters, or ovens fired on fuels other than natural gas. This exemption does not apply to gas-fired curing and forming ovens used for the production of mineral wool-type or textile-type fiberglass;

(6) any glass, fiberglass, and mineral wool melting furnaces with a maximum rated capacity of 2.0 MMBtu/hr or less;

(7) stationary gas turbines and stationary internal combustion engines, that are used as follows:

(A) in research and testing;

(B) for purposes of performance verification and testing;

(C) solely to power other engines or gas turbines during startups;

(D) exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(E) in response to and during the existence of any officially declared disaster or state of emergency;

(F) directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals; or

(G) as chemical processing gas turbines;

(8) any stationary diesel engine placed into service before June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month average; and

(B) has not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(9) any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, that:

(A) operates less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(B) meets the corresponding emission standard for nonroad engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998), and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account;

(10) boilers and industrial furnaces that were regulated as existing facilities by 40 CFR Part 266, Subpart H, as was in effect on June 9, 1993; and

(11) brick or ceramic kilns with a maximum rated capacity less than 5.0 MMBtu/hr.

(b) Increment of progress exemptions.

(1) Stationary, reciprocating internal combustion engines with a maximum rated capacity less than 300 horsepower are exempt from the emission specifications in §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration).

(2) The emission specifications in §117.410(a) of this title no longer apply to any stationary, reciprocating internal combustion engine subject to the emission specifications of §117.410(b) of this title after the compliance date specified in §117.9030(b) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

§117.410. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) Emission specifications for increment of progress. The owner or operator of any gas-fired stationary, reciprocating internal combustion engine with a maximum rated horsepower (hp) of 300 hp or greater shall comply with the following emission specifications, in accordance with the applicable schedule in §117.9030(a) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources), except as provided in subsection (e) of this section:

(1) nitrogen oxides (NO_x), as follows:

(A) lean-burn engines, 2.0 grams per horsepower-hour (g/hp-hr); and

(B) rich-burn engines:

(i) placed into service before January 1, 2000, that have not been modified, reconstructed, or relocated on or after January 1, 2000, 2.0 g/hp-hr. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(ii) installed, modified, reconstructed, or relocated on or after January 1, 2000, 0.50 g/hp-hr; and

(2) carbon monoxide (CO), 3.0 g/hp-hr.

(b) Emission specifications for eight-hour ozone attainment demonstration. No person shall allow the discharge into the atmosphere NO_x emissions in excess of the following emission specifications, in accordance with the applicable schedule in §117.9030(b) of this title, except as provided in subsection (e) of this section:

(1) gas-fired boilers:

(A) with a maximum rated capacity equal to or greater than 100 million British thermal units per hour (MMBtu/hr), 0.020 pounds per million British thermal units (lb/MMBtu);

(B) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, but less than 100 MMBtu/hr, 0.030 lb/MMBtu; and

(C) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 parts per million by volume (ppmv) NO_x, at 3.0% oxygen (O_2), dry basis);

(2) liquid-fired boilers, 2.0 pounds per 1,000 gallons of liquid burned;

(3) process heaters:

(A) with a maximum rated capacity equal to or greater than 40 MMBtu/hr, 0.025 lb/MMBtu; and

(B) with a maximum rated capacity less than 40 MMBtu/hr, 0.036 lb/MMBtu (or alternatively, 30 ppmv, at 3.0% O_2, dry basis);

(4) stationary, reciprocating internal combustion engines:

(A) gas-fired rich-burn engines:

(i) fired on landfill gas, 0.60 g/hp-hr; and

(ii) all others, 0.50 g/hp-hr;

(B) gas-fired lean-burn engines:

(i) fired on landfill gas, 0.60 g/hp-hr; and

(ii) all others, 0.50 g/hp-hr;

(C) dual-fuel engines, 0.50 g/hp-hr;

(D) diesel engines, excluding dual-fuel engines, placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated on or after June 1, 2007, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(E) for diesel engines, excluding dual-fuel engines, not subject to subparagraph (D) of this paragraph:

(i) with a hp rating of less than 50 hp that are installed, modified, reconstructed, or relocated on or after June 1, 2007, 5.0 g/hp-hr;

(ii) with a hp rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after June 1, 2007, but before January 1, 2008, 5.0 g/hp-hr; and

(II) on or after January 1, 2008, 3.3 g/hp-hr;

(iii) with a hp rating of 100 hp or greater, but less than 750 hp, that are installed, modified, reconstructed, or relocated on or after June 1, 2007, 2.8 g/hp-hr; and

(iv) with a hp rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after June 1, 2007, 4.5 g/hp-hr;

(5) stationary gas turbines:

(A) rated at 10 megawatts (MW) or greater, 0.032 lb/MMBtu;

(B) rated at 1.0 MW or greater, but less than 10 MW, 0.15 lb/MMBtu; and

(C) rated at less than 1.0 MW, 0.26 lb/MMBtu;

(6) duct burners used in turbine exhaust ducts, the corresponding gas turbine emission specification of paragraph (5) of this subsection;

(7) kilns:

(A) lime kilns, 3.1 pounds per ton (lb/ton) of calcium oxide; and

(B) brick and ceramic kilns, 0.175 lb/ton of product;

(8) metallurgical furnaces:

(A) heat treating furnaces, 0.087 lb/MMBtu;

(B) reheat furnaces, 0.10 lb/MMBtu;

(C) electric arc furnaces used in steel production, 0.30 lb/ton product; and

(D) lead smelting blast (cupola) and reverberatory furnaces used in conjunction, the combined rate of 0.45 lb/ton product;

(9) incinerators, either of the following:

(A) an 80% reduction from the daily NO_x emissions reported to the Industrial Emissions Assessment Section for the calendar year 2000 Emission Inventory. To ensure that this emission specification will result in a real 80% reduction in actual emissions, a consistent methodology must be used to calculate the 80% reduction; or

(B) 0.030 lb/MMBtu;

(10) glass and fiberglass melting furnaces:

(A) container glass melting furnaces, 1.30 lb/ton of glass pulled;

(B) mineral wool-type electric fiberglass melting furnaces, 1.45 lb/ton of product pulled; and

(C) mineral wool-type fiberglass regenerative furnaces, 1.45 lb/ton of product pulled;

(11) gas-fired curing and forming ovens used for the production of mineral wool-type or textile-type fiberglass, 0.036 lb/MMBtu;

(12) natural gas-fired ovens and heaters, 0.036 lb/MMBtu;

(13) natural gas-fired organic solvent, printing ink, clay, brick, and ceramic tile, calcining, and vitrifying dryers, 0.036 lb/MMBtu; and

(14) as an alternative to the emission specifications in paragraphs (1) - (13) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu. The capacity factor as of December 31, 2000, must be used to determine whether the unit is eligible for the emission specification of this paragraph. A 12-month rolling average must be used to determine the annual capacity factor for units placed into service after December 31, 2000.

(c) NO_x averaging time. The emission specifications of subsections (a) and (b) of this section apply:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.440 of this title (relating to Continuous Demonstration of Compliance), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable specification in lb/MMBtu; and

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.440 of this title, a block one-hour average, in the units of the applicable standard. Alternatively for boilers and process heaters, the emission specification may be applied in pounds per hour, as specified in paragraph (1)(C) of this subsection.

(d) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) or (b) of this section, emissions in excess of the following, except as provided in §117.425 of this title (relating to Alternative Case Specific Specifications) or paragraph (3) or (4) of this subsection.

(1) CO emissions must not exceed 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines; or 775 ppmv at 7.0% O_2, dry basis for wood fuel-fired boilers or process heaters):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO.

(2) For units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions must not exceed 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts) and gas-fired lean-burn engines; 7.0% O_2, dry, for incinerators; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(3) The correction of CO emissions to 3.0% O_2, dry basis, in paragraph (1) of this subsection does not apply to boilers and process heaters operating at less than 10% of maximum load and with stack O_2 in excess of 15% (i.e., hot-standby mode).

(4) The CO specifications in paragraph (1) of this subsection do not apply to:

(A) stationary internal combustion engines subject to subsection (a) of this section; or

(B) incinerators subject to the CO limits of one of the following:

(i) §111.121 of this title (relating to Single-, Dual-, and Multiple-Chamber Incinerators);

(ii) §113.2072 of this title (relating to Emission Limits) for hospital/medical/infectious waste incinerators; or

(iii) 40 CFR Part 264 or 265, Subpart O, for hazardous waste incinerators.

(e) Compliance flexibility.

(1) An owner or operator may use any of the following alternative methods to comply with the NO_x emission specifications of this section:

(A) §117.423 of this title (relating to Source Cap); or

(B) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) Section 117.425 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.425 of this title.

(f) Prohibition of circumvention.

(1) The maximum rated capacity used to determine the applicability of the emission specifications in this section and the initial compliance demonstration, monitoring, testing requirements, and final control plan in §§117.435, 117.440, and 117.454 of this title (relating to Initial Demonstration of Compliance; Continuous Demonstration of Compliance; and Final Control Plan Procedures for Attainment Demonstration Emission Specifications) must be the greater of the following:

(A) the maximum rated capacity as of December 31, 2000;

(B) the maximum rated capacity after December 31, 2000; or

(C) the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) after December 31, 2000.

(2) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter.

(3) Changes after December 31, 2000, to a unit subject to an emission specification in this section that result in increased NO_x emissions from a unit not subject to an emission specification of this section is prohibited. For example, redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator with a maximum rated capacity of less than 40 MMBtu/hr, or a flare, is prohibited.

(4) A source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but becomes a major source at any time after December 31, 2000, is from that time forward always classified as a major source for purposes of this chapter.

(5) The availability under subsection (b)(14) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (b)(14) of this section than would otherwise apply to the unit.

(6) This subsection does not apply to stationary, reciprocating internal combustion engines subject to subsection (a) of this section until the compliance date specified in §117.9030(b) of this title.

(g) Operating restrictions. No person may start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted from April 1 through October 31.

§117.423. Source Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), by achieving equivalent NO_x emission reductions obtained by compliance with a source cap emission limitation in accordance with the requirements of this section. Each equipment category at a source whose individual emission units would otherwise be subject to the NO_x emission specifications of §117.410 of this title may be included in the source cap. Any equipment category included in the source cap must include all emission units belonging to that category. Equipment categories include, but are not limited to, the following: steam generation, electrical generation, and units with the same product outputs, such as ethylene cracking furnaces. All emission units not included in the source cap must comply with the requirements of §117.410 of this title.

(b) The source cap allowable mass emission rate must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.423(b)(1)

(2) A maximum daily cap must be calculated for all emission units included in the source cap using the following equation.
Figure: 30 TAC §117.423(b)(2)

(3) Each emission unit included in the source cap is subject to the requirements of both paragraphs (1) and (2) of this subsection at all times.

(4) For stationary internal combustion engines, the source cap allowable emission rate must be calculated in pounds per hour using the following equation.
Figure: 30 TAC §117.423(b)(4)

(5) For stationary gas turbines, the source cap allowable emission rate must be calculated in pounds per hour using the following equations.
Figure: 30 TAC §117.423(b)(5)

(c) The owner or operator who elects to comply with this section shall:

(1) for each unit included in the source cap, either:

(A) install, calibrate, maintain, and operate a continuous exhaust NO_x monitor, carbon monoxide (CO) monitor, an oxygen (O_2) (or carbon dioxide (CO_2)) diluent monitor, and a totalizing fuel flow meter in accordance with the requirements of §117.440 of this title

(relating to Continuous Demonstration of Compliance). The required continuous emissions monitoring systems (CEMS) and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel use for each affected unit and must be used to demonstrate continuous compliance with the source cap;

(B) install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS) and a totalizing fuel flow meter in accordance with the requirements of §117.440 of this title. The required PEMS and fuel flow meters must be used to measure NO_x, CO, and O_2 (or CO_2) emissions and fuel flow for each affected unit and must be used to demonstrate continuous compliance with the source cap; or

(C) for units not subject to continuous monitoring requirements, use the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.435(d) of this title (relating to Initial Demonstration of Compliance) in lieu of CEMS or PEMS. Emission rates for these units are limited to the maximum emission rates obtained from testing conducted under §117.435(d) of this title; and

(2) for each operating unit equipped with CEMS, either use a PEMS in accordance with §117.440 of this title, or the maximum emission rate as measured by hourly emission rate testing conducted in accordance with §117.435(d) of this title, to provide emissions compliance data during periods when the CEMS is off-line. The methods specified in 40 Code of Federal Regulations §75.46 must be used to provide emissions substitution data for units equipped with PEMS.

(d) The owner or operator of any units subject to a source cap shall maintain daily records indicating the NO_x emissions from each source and the total fuel usage for each unit and include a total NO_x emissions summation and total fuel usage for all units under the source cap on a daily basis. Records must also be retained in accordance with §117.445 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(e) The owner or operator of any units operating under this provision shall report any exceedance of the source cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.445 of this title.

(f) The owner or operator shall demonstrate initial compliance with the source cap in accordance with the schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources)

(g) For compliance with §117.410 of this title, a unit that has been permanently retired or decommissioned and rendered inoperable may be included in the source cap under the following conditions.

(1) Permanent shutdowns must have occurred after December 31, 2000.

(2) The source cap emission limit for retired units is calculated in accordance with subsection (b) of this section.

(3) The actual heat input must be calculated according to subsection (b)(1) of this section. If the unit was not in service 24 consecutive months between January 1, 2000, and December 31, 2001, the actual heat input must be the average daily heat input for the continuous time period that the unit was in service, consistent with the heat input used to represent the unit's emissions in the attainment demonstration modeling inventory. The maximum heat input must be the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period.

(4) The owner or operator shall certify the unit's operational level and maximum rated capacity.

(5) Emission reductions from permanent shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(h) An owner or operator who chooses to use the source cap option shall include in the initial control plan, if required to be filed under §117.450 of this title (relating to Initial Control Plan Procedures), a plan for initial compliance. The owner or operator shall include in the initial control plan the identification of the election to use the source cap procedure as specified in this section to achieve compliance with this section and shall specifically identify all sources that will be included in the source cap. The owner or operator shall also include in the initial control plan the method of calculating the actual heat input for each unit included in the source cap, as specified in subsection (b)(1) of this section.

(i) For the purposes of determining compliance with the source cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate, as measured by the initial demonstration of compliance, for that unit, unless the owner or operator provides data demonstrating to the satisfaction of the executive director that actual emissions were less than maximum emissions during such periods.

§117.425. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of the carbon monoxide (CO) or ammonia specifications of §117.410(c) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.410(d) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission specification the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.410 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

§117.430. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the source cap emission limits of §117.423 of this title (relating to Source Cap) in compliance with those limitations.

(b) All units subject to the emission specifications of §117.410(a) or (b) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) or §117.423 of this title must be operated so as to minimize NO_x emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler, except for wood-fired boilers, must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each boiler and process heater controlled with induced draft FGR to reduce NO_x emissions must be operated such that the operation of FGR over the operating range is not restricted by artificial means.

(4) Each unit controlled with steam or water injection must be operated such that injection rates are maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity (corrected to 15% O_2 on a dry basis for stationary gas turbines).

(5) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(6) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(7) Each stationary internal combustion engine must be checked for proper operation of the engine according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.435. Initial Demonstration of Compliance.

(a) The owner or operator of any unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) shall test the unit as follows.

(1) The unit must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions while firing gaseous fuel or, as applicable, liquid and solid fuel.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Initial demonstration of compliance testing must be performed in accordance with the schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(b) The initial demonstration of compliance tests required by subsection (a) of this section must use the methods referenced in subsection (d) or (e) of this section and must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods.

(c) Any continuous emissions monitoring system (CEMS) or any predictive emissions monitoring system (PEMS) required by §117.440 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before conducting testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial relative accuracy test audit and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Compliance with the emission specifications of this division for units operating without CEMS or PEMS must be demonstrated according to the requirements of §117.8000 of this title (relating to Stack Testing Requirements).

(e) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.440 of this title, must be demonstrated after monitor certification testing using the CEMS or PEMS as follows.

(1) For boilers and process heaters complying with a NO_x emission specifications in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from the unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) For units complying with a NO_x emission specification on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable is used to determine compliance with the NO_x emission specification.

(3) For units complying with a CO emission specification, on a rolling 24-hour average, any 24-hour period is used to determine compliance with the CO emission specification.

(4) For units complying with §117.423 of this title (relating to Source Cap) a rolling 30-day average of total daily pounds of NO_x emissions from the units are monitored (or calculated in accordance with §117.423(c) of this title) for 30 successive source operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission limit. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(f) Compliance stack test reports must include the information required in §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.440. Continuous Demonstration of Compliance.

(a) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate a totalizing fuel flow meter, with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(1) The units are the following units subject to §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations):

(A) boilers;

(B) process heaters;

(C) duct burners used in turbine exhaust ducts;

(D) stationary, reciprocating internal combustion engines;

(E) stationary gas turbines;

(F) lime kilns

(G) brick and ceramic kilns;

(H) heat treating furnaces;

(I) reheat furnaces;

(J) electric arc furnaces used in steel production;

(K) lead smelting blast (cupola) and reverberatory furnaces;

(L) glass and fiberglass/mineral wool melting furnaces;

(M) incinerators (excluding vapor streams resulting from vessel cleaning routed to an incinerator, provided that fuel usage is quantified using good engineering practices, including calculation methods in general use and accepted in new source review permitting in Texas. All other fuel and vapor streams must be monitored in accordance with this subsection);

(N) gas-fired glass, fiberglass, and mineral wool curing and forming ovens;

(O) natural gas-fired ovens and heaters; and

(P) natural gas-fired organic solvent, printing ink, clay, brick, ceramic, and calcining and vitrifying dryers.

(2) The following are alternatives to the fuel flow monitoring requirements of paragraph (1) of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (f) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (f) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records maintained for each engine.

(b) Oxygen (O_2) monitors.

(1) The owner or operator shall install, calibrate, maintain, and operate an O_2 monitor to measure exhaust O_2 concentration on the following units operated with an annual heat input greater than $2.2(10^{11})$ British thermal units per year (Btu/yr):

(A) boilers with a rated heat input greater than or equal to 100 million British thermal units per hour (MMBtu/hr); and

(B) process heaters with a rated heat input greater than or equal to 100 MMBtu/hr, except:

(i) as provided in subsection (g) of this section; and

(ii) for process heaters operating with a carbon dioxide (CO_2) CEMS for diluent monitoring under subsection (f) of this section.

(2) The O_2 monitors required by this subsection are for process monitoring (predictive monitoring inputs, boiler trim, or process control) and are only required to meet the location specifications and quality assurance procedures referenced in subsection (f) of this section if O_2 is the monitored diluent under that subsection. However, if new O_2 monitors are required as a result of this subsection, the criteria in subsection (f) of this section should be considered the appropriate guidance for the location and calibration of the monitors.

(c) NO_x monitors.

(1) The owner or operator of units listed in this paragraph shall install, calibrate, maintain, and operate a CEMS or predictive emissions monitoring system (PEMS) to monitor exhaust NO_x. The units are:

(A) units with a rated heat input greater than or equal to 100 MMBtu/hr that are subject to §117.410(b) of this title;

(B) stationary gas turbines with a megawatt (MW) rating greater than or equal to 30 MW operated more than 850 hours per year;

(C) units that use a chemical reagent for reduction of NO_x;

(D) units that the owner or operator elects to comply with the NO_x emission specifications of §117.410(b) of this title using a pound per MMBtu (lb/MMBtu) limit on a 30-day rolling average;

(E) lime kilns; and

(F) brick kilns and ceramic kilns.

(2) Units subject to the NO_x CEMS requirements of 40 CFR Part 75 are not required to install CEMS or PEMS under this subsection.

(3) The owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(A) if the NO_x monitor is a CEMS:

(i) subject to 40 CFR Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(ii) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(B) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1340(d) of this title (relating to Continuous Demonstration of Compliance);

(C) if the NO_x monitor is a PEMS:

(i) use the methods specified in 40 CFR Part 75, Subpart D; or

(ii) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(D) the maximum block one-hour emission rate as measured during the initial demonstration of compliance required in §117.435(e) of this title (relating to Initial Demonstration of Compliance).

(d) Ammonia monitoring requirements. The owner or operator of any unit subject to §117.410(b) of this title and the ammonia emission specification of §117.410(c)(2) of this title shall monitor ammonia emissions from the unit according to the requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(e) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit listed in subsection (c)(1) of this section using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(f) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(2) The PEMS must meet the requirements of §117.8100(b) of this title.

(h) Engine monitoring. The owner or operator of any stationary gas engine subject to the emission specifications of this division shall stack test engine NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines)

(i) Run time meters. The owner or operator of any stationary gas turbine or stationary internal combustion engine claimed exempt using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions) shall record the operating time with a non-resettable elapsed run time meter.

(j) Data used for compliance. After the initial demonstration of compliance required by §117.435 of this title, the methods required in this section must be used to determine compliance with the emission specifications of §117.410(a) or (b) of this title. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable emission specifications.

(k) Testing requirements.

(1) The owner or operator of units that are subject to the emission specifications of §117.410(a) of this title shall test the units as specified in §117.435 of this title in accordance with the schedule specified in §117.9030(a) of this title.

(2) The owner or operator of units that are subject to the emission specifications of §117.410(b) of this title shall test the units as specified in §117.435 of this title in accordance with the schedule specified in §117.9030(b) of this title.

(3) The owner or operator of any unit not equipped with CEMS or PEMS that are subject to the emission specifications of §117.410(b) of this title shall retest the unit as specified in §117.435 of this title within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

§117.445. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, the United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type of fuel burned; and the date, time, and duration of the procedure.

(b) Notification. The owner or operator of an affected source shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) for units subject to the emission specifications of §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration):

(A) verbal notification of the date of any testing conducted under §117.435 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(B) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) relative accuracy test audit (RATA) conducted under §117.440 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) for units subject to the emission specifications of §117.410(b) of this title, written notification of any CEMS or PEMS RATA conducted under §117.440 of this title or any testing conducted under §117.435 of this title at least 15 days in advance of the date of the RATA or testing.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.435 of this title and any CEMS or PEMS RATA conducted under §117.440 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the compliance schedule specified in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS or PEMS under §117.440 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For units complying with §117.423 of this title (relating to Source Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period when the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Reporting for engines. The owner or operator of any gas-fired engine subject to the emission specifications in §117.410 of this title shall report in writing to the executive director on a semiannual basis any excess emissions and the air-fuel ratio monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions (based on the quarterly emission checks of §117.430(b)(7) of this title (relating to Operating Requirements) and the biennial emission testing required for demonstration of emissions compliance in accordance with §117.440(h) of this title, computed in pounds per hour and grams per horsepower-hour, any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the engine operating time during the reporting period; and

(2) specific identification, to the extent feasible, of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the engine or emission control system, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(f) Recordkeeping. The owner or operator of a unit subject to the requirements of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each unit subject to §117.440(a) of this title, records of annual fuel usage;

(2) for each unit using a CEMS or PEMS in accordance with §117.440 of this title, monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; or

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a daily or rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (lb/MMBtu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to the emission specifications of this division, records of:

(A) emissions measurements required by:

(i) §117.430(b)(7) of this title; and

(ii) §117.440(h) of this title; and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) for units claimed exempt from emission specifications using the exemption of §117.403(a)(7)(D), (8), or (9) of this title (relating to Exemptions), records of monthly hours of operation, for exemptions based on hours per year of operation. In addition, for each engine claimed exempt under §117.403(a)(7)(D) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation;

(5) records of ammonia measurements specified in §117.440(d) of this title;

(6) records of carbon monoxide measurements specified in §117.440(e) of this title;

(7) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS or PEMS;

(8) records of the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.435 of this title; and

(9) for each stationary diesel or dual-fuel engine, records of each time the engine is operated for testing and maintenance, including:

(A) date(s) of operation;

(B) start and end times of operation;

(C) identification of the engine; and

(D) total hours of operation for each month and for the most recent 12 consecutive months.

§117.450. Initial Control Plan Procedures.

(a) The owner or operator of any unit at a major source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to §117.410(b) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall submit an initial control plan. The control plan must include:

(1) a list of all combustion units at the account that are listed in §117.410(b) of this title. The list must include for each unit:

(A) the maximum rated capacity;

(B) anticipated annual capacity factor;

(C) estimated or measured NO_x emission data in the units associated with the category of equipment from §117.410(b) of this title;

(D) the method of determination for the NO_x emission data required by subparagraph (C) of this paragraph;

(E) the facility identification number and emission point number as submitted to the Industrial Emissions Assessment Section of the commission; and

(F) the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit;

(2) identification of all units with a claimed exemption from the emission specifications §117.410(b) of this title and the rule basis for the claimed exemption;

(3) identification of the election to use the source cap emission limit as specified in §117.423 of this title (relating to Source Cap) to achieve compliance with this rule and a list of the units to be included in the source cap;

(4) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(5) a list of units requiring operating modifications to comply with §117.430(b) of this title (relating to Operating Requirements) and the type of modification to be applied for all such units, including an anticipated construction schedule;

(6) for units required to install totalizing fuel flow meters in accordance with §117.440(a) of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter; and

(7) for units required to install continuous emissions monitoring systems or predictive emissions monitoring systems in accordance with §117.440 of this title, indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter.

(b) The initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for initial control plans in §117.9030(b) of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(c) For units located in Dallas, Denton, Collin, and Tarrant Counties subject to §117.210 of this title (relating to Emission Specifications for Attainment Demonstration), the owner or operator may elect to submit the most recent revision of the final control plan required by §117.254 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications) in lieu of the initial control plan required by subsection (a) of this section.

§117.454. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of any unit subject to §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstrations) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.410 of this title. The report must include:

(1) the section used to demonstrate compliance, either:

(A) §117.410 of this title;

(B) §117.423 of this title (relating to Source Cap); or

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the method of NO_x control for each unit;

(3) the emissions measured by testing required in §117.435 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the central or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.435 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specification of §117.410 of this title.

(b) For sources complying with §117.423 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily source cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.423(b)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.423(b)(1) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for final control plans in §117.9030 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the source cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9030 of this title.

§117.456. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the requirements and the final compliance dates of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources).

(1) For sources complying with §117.410 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), replacement new units may be included in the control plan.

(2) For sources complying with §117.423 of this title (relating to Source Cap), any new unit must be included in the source cap, if the unit belongs to an equipment category that is included in the source cap.

(3) The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER C. COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1. BEAUMONT-PORT ARTHUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1000, 117.1003, 117.1005, 117.1010, 117.1015, 117.1020, 117.1025, 117.1035, 117.1040, 117.1045, 117.1052, 117.1054, 117.1056

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.1000. Applicability.

(a) The provisions of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources) apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners in turbine exhaust ducts used in an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that is located within the Beaumont-Port Arthur ozone nonattainment area and is owned or operated by:

(1) a municipality or a Public Utility Commission of Texas (PUC) regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or

(2) an electric cooperative, independent power producer, municipality, river authority, or public utility.

(b) The provisions of this division are applicable for the life of each affected unit within an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

§117.1003. Exemptions.

(a) Reasonably available control technology. Units exempted from the provisions of §§117.1005, 117.1015, and 117.1040 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Alternative System-Wide Emission Specifications; and Continuous Demonstration of Compliance), except as specified in §117.1040(h) - (j) of this title, include the following:

(1) any new units placed into service after November 15, 1992;

(2) any utility boiler or auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year; or

(3) stationary gas turbines and engines, that are:

(A) used solely to power other engines or gas turbines during startups; or

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(b) Emission specifications for attainment demonstration. Stationary gas turbines and engines that are used solely to power other engines or gas turbines during startups are exempt from the provisions of §§117.1010, 117.1020, and 117.1040 of this title (relating to Emission Specifications for Attainment Demonstration; System Cap; and Continuous Demonstration of Compliance), except as specified in §117.1040(i) of this title.

(c) Emergency fuel oil firing.

(1) The fuel oil firing emission specifications of §§117.1005(c), 117.1010(a), 117.1015(b), and 117.1020 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas or the Southeastern Electric Reliability Council, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

(2) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

(3) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having

jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

§117.1005. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, emissions of nitrogen oxides (NO_x) in excess of 0.26 pounds per million British thermal units (lb/MMBtu) heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil.

(b) No person shall allow the discharge into the atmosphere from any utility boiler, NO_x emissions in excess of 0.38 lb/MMBtu heat input for tangentially-fired units on a rolling 24-hour averaging period or 0.43 lb/MMBtu heat input for wall-fired units on a rolling 24-hour averaging period while firing coal.

(c) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only.

(d) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of the heat input weighted average of the applicable emission specifications specified in subsections (a) and (c) of this section on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows.
Figure: 30 TAC §117.1005(d)

(e) Each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations Part 60, Subparts D, Db, or Dc is limited to the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subsection is not subject to the emission specifications of subsection (a), (c), or (d) of this section.

(f) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hours (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(1) 42 parts per million by volume (ppmv) at 15% oxygen (O_2), dry basis, while firing natural gas; and

(2) 65 ppmv at 15% O_2, dry basis, while firing fuel oil.

(g) No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit NO_x emissions in excess of a block one-hour average of:

(1) 0.20 lb/MMBtu heat input while firing natural gas; and

(2) 0.30 lb/MMBtu heat input while firing fuel oil.

(h) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler subject to the NO_x emission specifications specified in subsections (a) - (e) of this section, carbon monoxide (CO) emissions in excess of 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(1) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(2) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO.

(i) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis.

(j) No person shall allow the discharge into the atmosphere from any unit subject to this section, ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(k) For purposes of this subchapter, the following apply.

(1) The lower of any permit NO_x emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the NO_x emission specifications of subsections (a) - (g) of this section apply, except that gas-fired boilers operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 lb/MMBtu heat input, are limited to that rate for the purposes of this subchapter.

(2) For any unit placed into service after June 9, 1993, and prior to the final compliance date as specified in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission specifications of subsections (a) - (g) of this section apply. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission specifications of §117.1015 of this title (relating to Alternative System-Wide Emission Specifications). Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(l) This section no longer applies to any utility boiler after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9100(2) of this title.

§117.1010. Emission Specifications for Attainment Demonstration.

(a) Nitrogen oxides (NO_x) emission specifications. The owner or operator of each utility boiler shall ensure that emissions of NO_x do not exceed 0.10 pounds per million British thermal units (lb/MMBtu) heat input, on a daily average, except as provided in §117.1020 or §117.9800 of this title (relating to System Cap; and Use of Emission Credits for Compliance).

(b) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to the NO_x emission specifications specified in subsection (a) of this section:

(1) carbon monoxide (CO) emissions in excess of 400 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(A) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions in excess of 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(c) Compliance flexibility.

(1) An owner or operator may use either of the following alternative methods of compliance with the NO_x emission specifications of this section:

(A) §117.1020 of this title; or

(B) §117.9800 of this title.

(2) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.1025 of this title (relating to Alternative Case Specific Specifications).

(3) Section 117.1015 of this title (relating to Alternative System-Wide Emission Specifications) and §117.1025 of this title are not alternative methods of compliance with the NO_x emission specifications of this section.

§117.1015. Alternative System-Wide Emission Specifications.

(a) An owner or operator of any gaseous- or coal-fired utility boiler or stationary gas turbine may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.1005 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving compliance with a system-wide emission specification. Any owner or operator who elects to comply with system-wide emission specifications shall reduce emissions of NO_x from affected units so that, if all such units were operated at their maximum rated capacity, the system-wide emission rate from all units in the system as defined in §117.10 of this title (relating to Definitions) would not exceed the system-wide emission specification as defined in §117.10 of this title.

(1) The following units must comply with the individual emission specifications of §117.1005 of this title and must not be included in the system-wide emission specification:

(A) gas turbines used for peaking service subject to the emission specifications of §117.1005(g) of this title; and

(B) auxiliary steam boilers subject to the emission specifications of §117.1005(a), (c), (d), or (e) of this title.

(2) Coal-fired utility boilers must have a separate system average under this section, limited to those units.

(3) Oil-fired utility boilers must have a separate system average under this section, limited to those units. The NO_x emission specification assigned to each oil-fired unit in the system must not exceed 0.5 pounds per million British thermal units (lb/MMBtu) based on a rolling 24-hour average.

(b) The owner or operator shall establish enforceable emission limits for each affected unit in the system calculated in accordance with the maximum rated capacity averaging in this section as follows:

(1) for each gas-fired unit in the system, in lb/MMBtu:

(A) on a rolling 24-hour averaging period; and

(B) on a rolling 30-day averaging period;

(2) for each coal-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period;

(3) for stationary gas turbines, in the units of the appropriate emission specification of §117.1005 of this title; and

(4) for each fuel oil-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period.

(c) An owner or operator of any gaseous and liquid fuel-fired utility boiler or gas turbine shall:

(1) comply with the assigned maximum allowable emission rates for gas fuel while firing natural gas only;

(2) comply with the assigned maximum allowable emission rate for liquid fuel while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing, 24-hour average, allowable emission specification and the assigned liquid-firing allowable emission specification while operating on liquid and gaseous fuel concurrently.

(d) Solely for purposes of calculating the system-wide emission specification, the allowable mass emission rate for each affected unit must be calculated from the emission specifications of §117.1005 of this title, as follows.

(1) The NO_x emissions rate (in pounds per hour) for each affected utility boiler is determined by the following equation.
Figure: 30 TAC §117.1015(d)(1)

(2) The NO_x emissions rate (in pounds per hour) for each affected stationary gas turbine is determined by the following equations.
Figure: 30 TAC §117.1015(d)(2)

§117.1020. System Cap.

(a) An owner or operator of an electric generating facility (EGF) may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.1010 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO_x emission reductions obtained by compliance with a daily and 30-day system cap emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO_x emission rates of §117.1010 of this title must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.
Figure: 30 TAC §117.1020(c)(1)

(2) A maximum daily cap must be calculated using the following equation.
Figure: 30 TAC §117.1020(c)(2)

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The NO_x emissions monitoring required by §117.1040 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(1) if the NO_x monitor is a continuous emissions monitoring system (CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.1040(d) of this title;

(3) if the NO_x monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator of any EGF subject to a system cap shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1045 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any EGF subject to a system cap shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1045 of this title.

(h) The owner or operator of any EGF subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO_x monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO_x who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1, 4, or 5 of this title (relating to Emission Credit Banking and Trading; Discrete Emission Credit Banking and Trading; and System Cap Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap.

§117.1025. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.1005 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), or the carbon monoxide (CO) or ammonia specifications of §117.1010(b) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.1005 of this title or the CO or ammonia specifications in §117.1010(b) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.1005 or §117.1010 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1035. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedules specified in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.1040 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.1040 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows.

(1) To comply with the NO_x emission specification in pounds per million British thermal units (lb/MMbtu) on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) To comply with the NO_x emission specification in lb/MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission specification. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission specification for fuel oil firing must be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) For any electric generating facility (EGF) complying with §117.1020 of this title (relating to System Cap), a rolling 30-day average of total daily pounds of NO_x emissions from the EGF must be monitored (or calculated in accordance with §117.1020(e) of this title) for 30 successive system operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(4) To comply with the NO_x emission specification in pounds per hour or parts per million by volume (ppmv) at 15% O_2 dry basis, on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1040 of this title is used to determine compliance with the NO_x emission specification.

(5) To comply with the CO emission specification in ppmv on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission specification. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.1040. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pounds per million British thermal units) do not apply. Each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value.

(b) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit subject to the emission specifications of this division using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(c) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(d) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(e) Auxiliary steam boilers. The owner or operator of each auxiliary steam boiler as defined in §117.10 of this title (relating to Definitions) shall:

(1) install, calibrate, maintain, and operate a CEMS in accordance with this section; or

(2) comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.140 of this title (relating to Continuous Demonstration of Compliance).

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title.

(g) Stationary gas turbine monitoring for NO_x reasonably available control technology (RACT). The owner or operator of each stationary gas turbine subject to the emission specifications of §117.1005 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatts (MW) or peaking gas turbines (as defined in §117.10 of this title) that use steam or water injection to comply with the emission specifications of §117.1005(g) of this title:

(A) install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section; or

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ±5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.1005 of this title; and

(2) for stationary gas turbines subject to the emission specifications of §117.1005(f) of this title, install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section.

(h) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units are:

(1) any unit subject to the emission specifications of this division;

(2) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(3) any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.1003(a)(2) of this title (relating to Exemptions).

(i) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.1003(a)(3) or (b) of this title shall record the operating time with an elapsed run time meter approved by the executive director.

(j) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemptions of §117.1003(a)(2) or (3) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.1035 of this title (relating to Initial Demonstration of Compliance), the methods required in this section must be used to determine compliance with the emission specifications of §117.1005 of this title or §117.1010(a) of this title (relating to Emission Specifications for Attainment Demonstration). Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

(l) Enforcement of NO_x RACT limits. If compliance with §117.1005 of this title is selected, no unit subject to §117.1005 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.1005 of this title. If compliance with §117.1015 of this title (relating to Alternative System-Wide Emission Specifications) is selected, no unit subject to §117.1015 of this title may be operated at an emission rate higher than that approved by the executive director in accordance with §117.1052(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

§117.1045. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources) shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.1035 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.1040 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1035 of this title or any CEMS or PEMS performance evaluation conducted under §117.1040 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedules specified in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.1040 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission specifications in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.1040 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.1035 of this title; and

(B) for utility boilers complying with §117.1020 of this title (relating to System Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers);

(3) quantity and type of fuel burned;

(4) the injection rate of reactant chemicals (if applicable); and

(5) emission monitoring data, in accordance with §117.1040 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.1035 of this title; and

(7) records of hours of operation.

§117.1052. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.1000 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.1005 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of all units listed in §117.1000 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.1005 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.1005 of this title;

(B) §117.1015 of this title (relating to Alternative System-Wide Emission Specifications);

(C) §117.1025 of this title (relating to Alternative Case Specific Specifications); or

(D) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of NO_x control for each unit;

(4) the emissions measured by testing required in §117.1035 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1035 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources).

(b) For sources complying with §117.1015 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected unit the maximum NO_x emission rate, expressed in units of pounds per million British thermal units heat input on:

(A) a rolling 24-hour average and rolling 30-day average for gaseous fuel firing; and

(B) a rolling 24-hour average for oil or coal firing;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the system-wide average in accordance with §117.1015(e) of this title; and

(4) maintain a copy of the approved list of emission specifications for verification of continued compliance with the requirements of §117.1015 of this title.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission specification on a rolling 30-day average, according to the applicable schedule given in §117.9100 of this title.

§117.1054. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of utility boilers listed in §117.1000 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit to the executive director a final control report to show compliance with the requirements of §117.1010 of this title (relating to Emission Specifications for Attainment Demonstration). The report must include:

(1) the section under which NO_x compliance is being established for the utility boilers within the electric generating system, either:

(A) §117.1010 of this title; or

(B) §117.1020 of this title (relating to System Cap); and as applicable,

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the methods of NO_x control for each utility boiler;

(3) the emissions measured by testing required in §117.1035 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1035 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any utility boiler with a claimed exemption from the emission specifications of §117.1010 of this title.

(b) For sources complying with §117.1020 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily system cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.1020(c)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.1020(c)(2) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9100 of this title (relating to Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the system cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9100 of this title.

§117.1056. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specification and the final compliance dates of this division (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources). For sources complying with §§117.1005, 117.1010, or 117.1015 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative System-Wide Emission Specifications), replacement new units may be included in the control plan. The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 2. DALLAS-FORT WORTH OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1100, 117.1103, 117.1105, 117.1110, 117.1115, 117.1120, 117.1125, 117.1135, 117.1140, 117.1145, 117.1152, 117.1154, 117.1156

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers; §5.103, concerning Rules; and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.1100. Applicability.

(a) The provisions of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners in turbine exhaust ducts used in an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that is located within the Dallas-Fort Worth ozone nonattainment area and is owned or operated by:

(1) a municipality or a Public Utility Commission of Texas (PUC) regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or

(2) an electric cooperative, independent power producer, municipality, river authority, or public utility.

(b) The provisions of this division are applicable for the life of each affected unit within an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

(c) This division no longer applies to any electric generating facility in Collin, Dallas, Denton, and Tarrant Counties that is subject to the emission specifications in §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) after the appropriate compliance date(s) specified in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1103. Exemptions.

(a) Reasonably available control technology. Units exempted from the provisions of §§117.1105, 117.1115, and 117.1140 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Alternative System-Wide Emission Specifications; and Continuous Demonstration of Compliance), except as specified in §117.1140(h) - (j) of this title, include the following:

(1) any new units placed into service after November 15, 1992;

(2) any utility boiler or auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year; or

(3) stationary gas turbines and engines, that are:

(A) used solely to power other engines or gas turbines during startups; or

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(b) Emission specifications for attainment demonstration. Stationary gas turbines and engines that are used solely to power other engines or gas turbines during startups are exempt from the provisions of §§117.1110, 117.1120, and 117.1140 of this title (relating to Emission Specifications for Attainment Demonstration; System Cap; and Continuous Demonstration of Compliance), except as specified in §117.1140(i) of this title.

(c) Emergency fuel oil firing.

(1) The fuel oil firing emission specifications of §§117.1105(c), 117.1110(a), 117.1115(b), and 117.1120 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

(2) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

(3) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

§117.1105. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, emissions of nitrogen oxides (NO_x) in excess of 0.26 pound per million British thermal units (lb/MMBtu) heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil.

(b) No person shall allow the discharge into the atmosphere from any utility boiler, NO_x emissions in excess of 0.38 lb/MMBtu heat input for tangentially-fired units on a rolling 24-hour averaging period

or 0.43 lb/MMBtu heat input for wall-fired units on a rolling 24-hour averaging period while firing coal.

(c) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only.

(d) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of the heat input weighted average of the applicable emission specifications specified in subsections (a) and (c) of this section on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows.

Figure: 30 TAC §117.1105(d)

(e) Each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations Part 60, Subparts D, Db, or Dc is limited to the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subsection is not subject to the emission specifications of subsection (a), (c), or (d) of this section.

(f) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hours (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(1) 42 parts per million by volume (ppmv) at 15% oxygen (O_2), dry basis, while firing natural gas; and

(2) 65 ppmv at 15% O_2, dry basis, while firing fuel oil.

(g) No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit NO_x emissions in excess of a block one-hour average of:

(1) 0.20 lb/MMBtu heat input while firing natural gas; and

(2) 0.30 lb/MMBtu heat input while firing fuel oil.

(h) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler subject to the NO_x emission specifications specified in subsections (a) - (e) of this section, carbon monoxide (CO) emissions in excess of 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(1) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(2) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO.

(i) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis.

(j) No person shall allow the discharge into the atmosphere from any unit subject to this section, ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(k) For purposes of this subchapter, the following apply.

(1) The lower of any permit NO_x emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the NO_x emission specifications of subsections (a) - (g) of this section apply, except that gas-fired boilers operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 lb/MMBtu heat input, are limited to that rate for the purposes of this subchapter.

(2) For any unit placed into service after June 9, 1993, and prior to the final compliance date as specified in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission specifications of subsections (a) - (g) of this section apply. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission specifications of §117.1115 of this title (relating to Alternative System-Wide Emission Specifications). Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(l) This section no longer applies to any utility boiler after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9110(2) of this title.

§117.1110. Emission Specifications for Attainment Demonstration.

(a) Nitrogen oxides (NO_x) emission specifications. The owner or operator of each utility boiler shall ensure that emissions of NO_x do not exceed:

(1) 0.033 pounds per million British thermal units (lb/MMBtu) heat input from boilers that are part of a large utility system, as defined in §117.10 of this title (relating to Definitions), on a daily average, except as provided in §117.1120 or §117.9800 of this title (relating to System Cap; and Use of Emission Credits for Compliance); and

(2) 0.06 lb/MMBtu heat input from boilers that are part of a small utility system, as defined in §117.10 of this title, on a daily average, except as provided in §117.1120 or §117.9800 of this title. The annual heat input exemption of §117.1103(a)(2) of this title (relating to Exemptions) is not applicable to a small utility system.

(b) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to the NO_x emission specifications specified in subsection (a) of this section:

(1) carbon monoxide (CO) emissions in excess of 400 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(A) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions in excess of 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(c) Compliance flexibility.

(1) An owner or operator may use either of the following alternative methods of compliance with the NO_x emission specifications of this section:

(A) §117.1120 of this title; or

(B) §117.9800 of this title.

(2) An owner or operator may petition the executive director for an alternative to the CO or ammonia specification of this section in accordance with §117.1125 of this title (relating to Alternative Case Specific Specifications).

(3) Section 117.1115 of this title (relating to Alternative System-Wide Emission Specifications) and §117.1125 of this title are not alternative methods of compliance with the NO_x emission specifications of this section.

§117.1115. Alternative System-Wide Emission Specifications.

(a) An owner or operator of any gaseous- or coal-fired utility boiler or stationary gas turbine may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving compliance with a system-wide emission specification. Any owner or operator who elects to comply with system-wide emission specifications shall reduce emissions of NO_x from affected units so that, if all such units were operated at their maximum rated capacity, the system-wide emission rate from all units in the system as defined in §117.10 of this title (relating to Definitions) would not exceed the system-wide emission specification as defined in §117.10 of this title.

(1) The following units must comply with the individual emission specifications of §117.1105 of this title and must not be included in the system-wide emission specification:

(A) gas turbines used for peaking service subject to the emission specifications of §117.1105(g) of this title; and

(B) auxiliary steam boilers subject to the emission specifications of §117.1105(a), (c), (d), or (e) of this title.

(2) Coal-fired utility boilers must have a separate system average under this section, limited to those units.

(3) Oil-fired utility boilers must have a separate system average under this section, limited to those units. The NO_x emission specification assigned to each oil-fired unit in the system must not exceed 0.5 pounds per million British thermal units (lb/MMBtu) based on a rolling 24-hour average.

(b) The owner or operator shall establish enforceable emission limits for each affected unit in the system calculated in accordance with the maximum rated capacity averaging in this section as follows:

(1) for each gas-fired unit in the system, in lb/MMBtu:

(A) on a rolling 24-hour averaging period; and

(B) on a rolling 30-day averaging period;

(2) for each coal-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period;

(3) for stationary gas turbines, in the units of the appropriate emission specification of §117.1105 of this title; and

(4) for each fuel oil-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period.

(c) An owner or operator of any gaseous and liquid fuel-fired utility boiler or gas turbine shall:

(1) comply with the assigned maximum allowable emission rates for gas fuel while firing natural gas only;

(2) comply with the assigned maximum allowable emission rate for liquid fuel while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing, 24-hour average, allowable emission specification and the assigned liquid-firing allowable emission specifications while operating on liquid and gaseous fuel concurrently.

(d) Solely for purposes of calculating the system-wide emission specification, the allowable mass emission rate for each affected unit must be calculated from the emission specifications of §117.1105 of this title, as follows.

(1) The NO_x emissions rate (in pounds per hour) for each affected utility boiler is determined by the following equation.
Figure: 30 TAC §117.1115(d)(1)

(2) The NO_x emissions rate (in pounds per hour) for each affected stationary gas turbine is determined by the following equations.
Figure: TAC 30 §117.1115(d)(2)

§117.1120. System Cap.

(a) An owner or operator of an electric generating facility (EGF) may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration) by achieving equivalent NO_x emission reductions obtained by compliance with a daily and 30-day system cap emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO_x emission rates of §117.1110 of this title must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.
Figure: 30 TAC §117.1120(c)(1)

(2) A maximum daily cap must be calculated using the following equation.
Figure: 30 TAC §117.1120(c)(2)

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The NO_x emissions monitoring required by §117.1140 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(1) if the NO_x monitor is a continuous emissions monitoring system (CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.1140(d) of this title;

(3) if the NO_x monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) if the methods specified in paragraphs (1) - (3) of this subsection are not used, the owner or operator shall use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator of any EGF subject to a system cap shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any EGF subject to a system cap shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1145 of this title.

(h) The owner or operator of any EGF subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO_x monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO_x who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1, 4, or 5 of this title (relating to Emission Credit Banking and Trading; Discrete Emission Credit Banking and Trading; and System Cap Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap. The value R_i in this section is based on the unit's status as part of a large or small system as of January 1, 2000, and does not change as a result of sale or transfer of the unit, regardless of the size of the transferee's system.

§117.1125. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), or the carbon monoxide (CO) or ammonia specifications of §117.1110(b) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.1105 of this title or the CO or ammonia specifications in §117.1110(b) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.1105 or §117.1110 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources.

§117.1135. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedules specified in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.1140 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.1140 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows.

(1) To comply with the NO_x emission specification in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) To comply with the NO_x emission specification in lb/MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission specification. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission specification for fuel oil firing must be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) Any electric generating facility (EGF) complying with §117.1120 of this title (relating to System Cap), a rolling 30-day average of total daily pounds of NO_x emissions from the EGF must be monitored (or calculated in accordance with §117.1120(e) of this title) for 30 successive system operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(4) To comply with the NO_x emission specification in pounds per hour or parts per million by volume (ppmv) at 15% O_2 dry basis, on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1140 of this title is used to determine compliance with the NO_x emission specification.

(5) To comply with the CO emission specification in ppmv on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission specification. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.1140. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pounds per million British thermal units) do not apply. Each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value.

(b) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit subject to the emission specifications of this division using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(c) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(d) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(e) Auxiliary steam boilers. The owner or operator of each auxiliary steam boiler as defined in §117.10 of this title (relating to Definitions) shall:

(1) install, calibrate, maintain, and operate a CEMS in accordance with this section; or

(2) comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.240 of this title (relating to Continuous Demonstration of Compliance).

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title.

(g) Stationary gas turbine monitoring for NO_x reasonably available control technology (RACT). The owner or operator of each stationary gas turbine subject to the emission specifications of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatts (MW) or peaking gas turbines (as defined in §117.10 of this title) that use steam or water injection to comply with the emission specifications of §117.1105(g) of this title:

(A) install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section; or

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ±5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.1105 of this title; and

(2) for stationary gas turbines subject to the emission specifications of §117.1105(f) of this title, install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section.

(h) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units are:

(1) any unit subject to the emission specifications of this division;

(2) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(3) any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.1103(a)(2) of this title (relating to Exemptions).

(i) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.1103(a)(3) or (b) of this title shall record the operating time with an elapsed run time meter approved by the executive director.

(j) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemptions of §117.1103(a)(2) or (3) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.1135 of this title (relating to Initial Demonstration of Compliance), the methods required in this section must be used to determine compliance with the emission specifications of §117.1105 of this title or §117.1110(a) of this title (relating to Emissions Specifications for Attainment Demonstration). Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

(l) Enforcement of NO_x RACT limits. If compliance with §117.1105 of this title is selected, no unit subject to §117.1105 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.1105 of this title. If compliance with §117.1115 of this title (relating to Alternative System-Wide Emission Specifications) is selected, no unit subject to §117.1115 of this title may be operated at an emission rate higher than that approved by the executive director in accordance with §117.1152 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

§117.1145. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources) shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.1135 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.1140 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1135 of this title or any CEMS or PEMS performance evaluation conducted under §117.1140 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedules specified in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.1140 of this title shall report in writing

to the executive director on a semiannual basis any exceedance of the applicable emission specifications in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.1140 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.1135 of this title; and

(B) for utility boilers complying with §117.1120 of this title (relating to System Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers);

(3) quantity and type of fuel burned;

(4) the injection rate of reactant chemicals (if applicable); and

(5) emission monitoring data, in accordance with §117.1140 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.1135 of this title; and

(7) records of hours of operation.

§117.1152. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.1100 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.1105 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of all units listed in §117.1100 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.1105 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.1105 of this title;

(B) §117.1115 of this title (relating to Alternative System-Wide Emission Specifications);

(C) §117.1125 of this title (relating to Alternative Case Specific Specifications); or

(D) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of NO_x control for each unit;

(4) the emissions measured by testing required in §117.1135 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1135 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources).

(b) For sources complying with §117.1115 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected unit the maximum NO_x emission rate, expressed in units of pounds per million British thermal units heat input on:

(A) a rolling 24-hour average and rolling 30-day average for gaseous fuel firing, and

(B) a rolling 24-hour average for oil or coal firing;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the system-wide average in accordance with §117.1115(e) of this title; and

(4) maintain a copy of the approved list of emission specifications for verification of continued compliance with the requirements of §117.1115 of this title.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission specification on a rolling 30-day average, according to the applicable schedule given in §117.9110 of this title.

§117.1154. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of utility boilers listed in §117.1100 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit to the executive director a final control report to show compliance with the requirements of §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration). The report must include:

(1) the section under which NO_x compliance is being established for the utility boilers within the electric generating system, either:

(A) §117.1110 of this title; or

(B) §117.1120 of this title (relating to System Cap); and as applicable,

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(2) the methods of NO_x control for each utility boiler;

(3) the emissions measured by testing required in §117.1135 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1135 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any utility boiler with a claimed exemption from the emission specifications of §117.1110 of this title.

(b) For sources complying with §117.1120 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily system cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.1120(c)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.1120(c)(2) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9110 of this title (relating to Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the system cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9110 of this title.

§117.1156. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specifications and the final compliance dates of this division (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources). For sources complying with §§117.1105, 117.1110, or 117.1115 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative System-Wide Emission Specifications), replacement new units may be included in the control plan. The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 3. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1200, 117.1203, 117.1205, 117.1210, 117.1215, 117.1220, 117.1225, 117.1235, 117.1240, 117.1245, 117.1252, 117.1254, 117.1256

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules,

and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.1200. Applicability.

(a) The provisions of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources) apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners in turbine exhaust ducts used in an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that is located within the Houston-Galveston-Brazoria ozone nonattainment area and is owned or operated by:

(1) a municipality or a Public Utility Commission of Texas (PUC) regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or

(2) an electric cooperative, independent power producer, municipality, river authority, or public utility.

(b) The provisions of this division are applicable for the life of each affected unit within an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

§117.1203. Exemptions.

(a) Reasonably available control technology. Units exempted from the provisions of §§117.1205, 117.1215, and 117.1240 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Alternative System-Wide Emission Specifications; and Continuous Demonstration of Compliance), except as specified in §117.1240(i) - (k) of this title, include the following:

(1) any new units placed into service after November 15, 1992;

(2) any utility boiler or auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year; or

(3) stationary gas turbines and engines, that are:

(A) used solely to power other engines or gas turbines during startups; or

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(b) Emission specifications for attainment demonstration. Stationary gas turbines and engines that are used solely to power other engines or gas turbines during startups are exempt from the provisions of §§117.1210, 117.1220, and 117.1240 of this title (relating to Emission Specifications for Attainment Demonstration; System Cap; and Continuous Demonstration of Compliance), except as specified in §117.1240(j) of this title.

(c) Emergency fuel oil firing.

(1) The fuel oil firing emission specifications of §§117.1205(c), 117.1210(a)(1)(B), 117.1215(b), and 117.1220 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas or the Southeastern Electric Reliability Council, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

(2) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

(3) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

§117.1205. Emission Specifications for Reasonably Available Control Technology (RACT).

(a) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, emissions of nitrogen oxides (NO_x) in excess of 0.26 pounds per million British thermal units (lb/MMBtu) heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil.

(b) No person shall allow the discharge into the atmosphere from any utility boiler, NO_x emissions in excess of 0.38 lb/MMBtu heat input for tangentially-fired units on a rolling 24-hour averaging period or 0.43 lb/MMBtu heat input for wall-fired units on a rolling 24-hour averaging period while firing coal.

(c) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only.

(d) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler, NO_x emissions in excess of the heat input weighted average of the applicable emission specifications specified in subsections (a) and (c) of this section on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows:

Figure: 30 TAC §117.1205(d)

(e) Each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations Part 60, Subparts D, Db, or Dc is limited to the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subsection is not subject to the emission specifications of subsection (a), (c), or (d) of this section.

(f) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hours (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(1) 42 parts per million by volume (ppmv) at 15% oxygen (O_2), dry basis, while firing natural gas; and

(2) 65 ppmv at 15% O_2, dry basis, while firing fuel oil.

(g) No person shall allow the discharge into the atmosphere from any stationary gas turbine used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit NO_x emissions in excess of a block one-hour average of:

(1) 0.20 lb/MMBtu heat input while firing natural gas; and

(2) 0.30 lb/MMBtu heat input while firing fuel oil.

(h) No person shall allow the discharge into the atmosphere from any utility boiler or auxiliary steam boiler subject to the NO_x emission specifications specified in subsections (a) - (e) of this section, carbon monoxide (CO) emissions in excess of 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(1) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(2) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO.

(i) No person shall allow the discharge into the atmosphere from any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis.

(j) No person shall allow the discharge into the atmosphere from any unit subject to this section, ammonia emissions in excess of 20 ppmv based on a block one-hour averaging period.

(k) For purposes of this subchapter, the following apply.

(1) The lower of any permit NO_x emission limit in effect on June 9, 1993, under a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) and the NO_x emission specifications of subsections (a) - (g) of this section apply, except that gas-fired boilers operating under a permit issued after March 3, 1982, with a NO_x emission limit of 0.12 lb/MMBtu heat input, are limited to that rate for the purposes of this subchapter.

(2) For any unit placed into service after June 9, 1993, and prior to the final compliance date as specified in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources) as functionally identical replacement for an existing unit or group of units subject to the provisions of this chapter, the higher of any permit NO_x emission limit under a permit issued after June 9, 1993, in accordance with Chapter 116 of this title and the emission specifications of subsections (a) - (g) of this section apply. Any emission credits resulting from the operation of such replacement units are limited to the cumulative maximum rated capacity of the units replaced. The inclusion of such new units is an optional method for complying with the emission specifications of §117.1215 of this title (relating to Alternative System-Wide Emission Specifications). Compliance with this paragraph does not eliminate the requirement for new units to comply with Chapter 116 of this title.

(l) This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9120(2) of this title. For purposes of this subsection, this means that the reasonably available control technology (RACT) emission specifications of this section remain in effect until the emissions allocation for a unit under the Houston-Galveston-Brazoria mass emissions cap are equal to or less than the allocation that would be calculated using the RACT emission specifications of this section.

§117.1210. Emission Specifications for Attainment Demonstration.

(a) Emission specifications for the Mass Emission Cap and Trade Program. The owner or operator of each utility boiler, auxiliary steam boiler, or stationary gas turbine shall ensure that emissions of nitrogen oxides (NO_x) do not exceed the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the following rates, in pounds per million British thermal units (lb/MMBtu) heat input, on the basis of daily and 30-day averaging periods as specified in §117.1220 of this title (relating to System Cap), and as specified in the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program):

(1) utility boilers:

(A) gas-fired, 0.030; and

(B) coal-fired or oil-fired:

(i) wall-fired, 0.050; and

(ii) tangential-fired, 0.045;

(2) auxiliary steam boilers, 0.030; and

(3) stationary gas turbines (including duct burners used in turbine exhaust ducts), 0.032.

(b) Related emissions. No person shall allow the discharge into the atmosphere from any unit subject to subsection (a) of this section:

(1) carbon monoxide (CO) emissions in excess of 400 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units, 0.31 lb/MMBtu

heat input for oil-fired units, and 0.33 lb/MMBtu heat input for coal-fired units), based on:

(A) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions in excess of 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(c) Compliance flexibility.

(1) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.1225 of this title (relating to Alternative Case Specific Specifications).

(2) Section 117.1215 of this title (relating to Alternative System-Wide Emission Specifications) and §117.1225 of this title are not alternative methods of compliance with the NO_x emission specifications of this section.

(3) For units that meet the definition of electric generating facility (EGF), the owner or operator shall use both the methods specified in §117.1220 of this title and the mass emissions cap and trade program in Chapter 101, Subchapter H, Division 3 of this title to comply with the NO_x emission specifications of this section. An owner or operator may use the alternative methods specified in §117.9800 of this title (relating to Use of Emission Credits for Compliance) for purposes of complying with §117.1220 of this title.

(4) For units that do not meet the definition of EGF, the owner or operator shall use the mass emissions cap and trade program in Chapter 101, Subchapter H, Division 3 of this title to comply with the NO_x emission specifications of this section.

§117.1215. Alternative System-Wide Emission Specifications.

(a) An owner or operator of any gaseous- or coal-fired utility boiler or stationary gas turbine may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)) by achieving compliance with a system-wide emission specification. Any owner or operator who elects to comply with system-wide emission specifications shall reduce emissions of NO_x from affected units so that, if all such units were operated at their maximum rated capacity, the system-wide emission rate from all units in the system as defined in §117.10 of this title (relating to Definitions) would not exceed the system-wide emission specification as defined in §117.10 of this title.

(1) The following units must comply with the individual emission specifications of §117.1205 of this title and must not be included in the system-wide emission specification:

(A) gas turbines used for peaking service subject to the emission specifications of §117.1205(g) of this title; and

(B) auxiliary steam boilers subject to the emission specifications of §117.1205(a), (c), (d), or (e) of this title.

(2) Coal-fired utility boilers must have a separate system average under this section, limited to those units.

(3) Oil-fired utility boilers must have a separate system average under this section, limited to those units. The NO_x emission specification assigned to each oil-fired unit in the system must not exceed 0.5 pounds per million British thermal units (lb/MMBtu) based on a rolling 24-hour average.

(b) The owner or operator shall establish enforceable emission limits for each affected unit in the system calculated in accordance with the maximum rated capacity averaging in this section as follows:

(1) for each gas-fired unit in the system, in lb/MMBtu:

(A) on a rolling 24-hour averaging period; and

(B) on a rolling 30-day averaging period;

(2) for each coal-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period;

(3) for stationary gas turbines, in the units of the appropriate emission specification of §117.1205 of this title; and

(4) for each fuel oil-fired unit in the system, in lb/MMBtu on a rolling 24-hour averaging period.

(c) An owner or operator of any gaseous and liquid fuel-fired utility boiler or gas turbine shall:

(1) comply with the assigned maximum allowable emission rates for gas fuel while firing natural gas only;

(2) comply with the assigned maximum allowable emission rate for liquid fuel while firing liquid fuel only; and

(3) comply with a limit calculated as the actual heat input weighted sum of the assigned gas-firing, 24-hour average, allowable emission specification and the assigned liquid-firing allowable emission specification while operating on liquid and gaseous fuel concurrently.

(d) Solely for purposes of calculating the system-wide emission specification, the allowable mass emission rate for each affected unit must be calculated from the emission specifications of §117.1205 of this title, as follows.

(1) The NO_x emissions rate (in pounds per hour) for each affected utility boiler is determined by the following equation.
Figure: 30 TAC §117.1215(d)(1)

(2) The NO_x emissions rate (in pounds per hour) for each affected stationary gas turbine is determined by the following equations.
Figure: 30 TAC §117.1215(d)(2)

(e) This section no longer applies after the appropriate compliance date(s) for emission specifications for attainment demonstration given in §117.9120(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources). For purposes of this subsection, this means that the alternative system-wide emission specifications of this section remain in effect until the emissions allocation for units under the Houston-Galveston-Brazoria mass emissions cap are equal to or less than the allocation that would be calculated using the alternative system-wide emission specifications of this section.

§117.1220. System Cap.

(a) An owner or operator of an electric generating facility (EGF) shall comply with a daily and 30-day system cap nitrogen oxides (NO_x) emission limitation in accordance with the requirements of this section.

(b) Each EGF within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that is subject to §117.1210(a) of this title (relating to Emission Specifications for Attainment Demonstration) must be included in the system cap.

(c) The system cap must be calculated as follows.

(1) A rolling 30-day average emission cap must be calculated using the following equation.
Figure: 30 TAC §117.1220(c)(1)

(2) A maximum daily cap must be calculated using the following equation.
Figure: 30 TAC §117.1220(c)(2)

(3) Each EGF in the system cap is subject to the emission limits of both paragraphs (1) and (2) of this subsection at all times.

(d) The NO_x emissions monitoring required by §117.1240 of this title (relating to Continuous Demonstration of Compliance) for each EGF in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating EGF, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(1) if the NO_x monitor is a continuous emissions monitoring system (CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use 40 CFR Part 75, Appendix E monitoring in accordance with §117.1240(e) of this title;

(3) if the NO_x monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) if the methods specified in paragraphs (1) - (3) of this subsection are not used, the owner or operator shall use the maximum block one-hour emission rate as measured by the 30-day testing.

(f) The owner or operator shall maintain daily records indicating the NO_x emissions and fuel usage from each EGF and summations of total NO_x emissions and fuel usage for all EGFs under the system cap on a daily basis. Records must also be retained in accordance with §117.1245 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator shall report any exceedance of the system cap emission limit within 48 hours to the appropriate regional office. The owner or operator shall then follow up within 21 days of the exceedance with a written report to the regional office that includes an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance. Additionally, the owner or operator shall submit semiannual reports for the monitoring systems in accordance with §117.1245 of this title.

(h) The owner or operator shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

(i) An EGF that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred after January 1, 2000. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected EGF that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO_x monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and the United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO_x who is participating in the system cap under this section may exceed their system cap provided that the owner or operator is complying with the requirements of §117.9800 of this title (relating to Use of Emission Credits for Compliance) or Chapter 101, Subchapter H, Division 1, 4, or 5 of this title (relating to Emission Credit Banking and Trading; Discrete Emission Credit Banking and Trading; and System Cap Trading).

(m) In the event that a unit within an electric power generating system is sold or transferred, the unit must become subject to the transferee's system cap.

§117.1225. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements of §117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), or the carbon monoxide (CO) or ammonia specifications of §117.1210(b) of this title (relating to Emission Specifications for Attainment Demonstration), the executive director may approve emission specifications different from §117.1205 of this title or the CO or ammonia specifications in §117.1210(b) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.1205 or §117.1210 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1235. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedules specified in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.1240 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the requirements of this division for units operating with CEMS or PEMS in accordance with §117.1240 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows.

(1) To comply with the NO_x emission specification in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) To comply with the NO_x emission specification in lb/MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission specification. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission specification for fuel oil firing must be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) For any electric generating facility (EGF) complying with §117.1220 of this title (relating to System Cap), a rolling 30-day average of total daily pounds of NO_x emissions from the EGF must be monitored (or calculated in accordance with §117.1220(e) of this title) for 30 successive system operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all daily emissions data recorded by the monitoring and recording system during the 30-day test period. There must be no exceedances of the maximum daily cap during the 30-day test period.

(4) To comply with the NO_x emission specification in pounds per hour or parts per million by volume (ppmv) at 15% O_2 dry basis, on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1240 of this title is used to determine compliance with the NO_x emission specification.

(5) To comply with the CO emission specification in ppmv on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission specification. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.1240. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pounds per million British thermal units) therein do not apply. Each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value.

(b) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit subject to this division using one or more of the methods in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(c) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specification in §117.1210(b)(2) of this title (relating to Emission Specifications for Attainment Demonstration) shall comply with the ammonia monitoring requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(d) CEMS requirements.

(1) For units subject to §117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), any CEMS required by this section must comply with the requirements of §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(2) The owner or operator of any unit subject to §117.1210 of this title shall comply with the following:

(A) any CEMS required by this section must comply with the requirements of §117.8110(a)(1) of this title;

(B) all bypass stacks must be monitored in order to quantify emissions directed through the bypass stack;

(C) one CEMS may be shared among units, provided:

(i) the exhaust stream of each stack is analyzed separately; and

(ii) the CEMS meets the certification requirements of §117.8110(a)(1) of this title for each stack while the CEMS is operating in the time-shared mode; and

(D) exhaust streams of units that vent to a common stack do not need to be analyzed separately.

(e) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(f) Auxiliary steam boilers. The owner or operator of each auxiliary steam boiler as defined in §117.10 of this title (relating to Definitions) shall:

(1) install, calibrate, maintain, and operate a CEMS in accordance with this section; or

(2) comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.340 of this title (relating to Continuous Demonstration of Compliance).

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the requirements of this division.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title.

(h) Stationary gas turbine monitoring for NO_x RACT. The owner or operator of each stationary gas turbine subject to the emission specifications of §117.1205 of this title, instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatts or peaking gas turbines (as defined in §117.10 of this title) that use steam or water injection to comply with the emission specifications of §117.1205(g) of this title:

(A) install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section; or

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ±5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.1205 of this title; and

(2) for stationary gas turbines subject to the emission specifications of §117.1205(f) of this title, install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section.

(i) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units are:

(1) for units subject to §117.1205 of this title:

(A) any unit subject to the emission specifications of this division;

(B) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(C) any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.1203(a)(2) of this title (relating to Exemptions); and

(2) for units subject to §117.1210 of this title:

(A) utility boilers;

(B) auxiliary steam boilers; and

(C) stationary gas turbines.

(j) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.1203(a)(3) or (b) of this title shall record the operating time with an elapsed run time meter approved by the executive director.

(k) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemptions of §117.1203(a)(2) or (3) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(l) Data used for compliance.

(1) After the initial demonstration of compliance required by §117.1235 of this title (relating to Initial Demonstration of Compliance), the methods required in this section must be used to determine compliance with the emission specifications of §117.1205 of this title. Compliance with the emission specification may also be determined at the discretion of the executive director using any commission compliance method.

(2) For units subject to §117.1210(a) of this title, the methods required in this section must be used in conjunction with the requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) to determine compliance. For enforcement purposes, the executive director may also use other commission compliance methods to determine whether the source is in compliance with applicable requirements.

(m) Enforcement of NO_x RACT limits. If compliance with §117.1205 of this title is selected, no unit subject to §117.1205 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.1205 of this title. If compliance with §117.1215 of this title (relating to Alternative System-Wide Emission Specifications) is selected, no unit subject to §117.1215 of this title may be operated at an emission rate higher than that approved by the executive director in accordance with §117.1252(b) of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology).

(n) Testing requirements. The owner or operator of units subject to §117.1210(a) of this title must test the units as specified in §117.1235 of this title in accordance with the schedule specified in §117.9120(2) of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

(o) Emission allowances. The owner or operator of units subject to §117.1210(a) of this title shall comply with the following.

(1) The NO_x testing and monitoring data of subsections (a), (i), and (n) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor for calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(2) For units not operating with a CEMS or PEMS, the following apply.

(A) Retesting as specified in subsection (n) of this section is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in subsection (n) of this section may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting must establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(D) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(3) The emission factor in paragraph (1) or (2) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

§117.1245. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources) shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) verbal notification of the date of any testing conducted under §117.1235 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.1240 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1235 of this title or any CEMS or PEMS performance evaluation conducted under §117.1240 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedules specified in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.1240 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations (CFR) §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period:

(A) for stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.1240 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.1235 of this title; and

(B) for utility boilers complying with §117.1220 of this title (relating to System Cap), excess emissions are each daily period that the total nitrogen oxides (NO_x) emissions exceed the rolling 30-day average or the maximum daily NO_x cap;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers);

(3) quantity and type of fuel burned;

(4) the injection rate of reactant chemicals (if applicable); and

(5) emission monitoring data, in accordance with §117.1240 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.1235 of this title;

(7) records of hours of operation; and

(8) for units subject to the ammonia monitoring requirements of §117.1240(c) of this title, records that are sufficient to demonstrate compliance with the requirements of §117.8130 of this title (relating to Ammonia Monitoring). For the sorbent or stain tube option, these records must include the ammonia injection rate and NO_x stack emissions measured during each sorbent or stain tube test.

§117.1252. Final Control Plan Procedures for Reasonably Available Control Technology.

(a) The owner or operator of units listed in §117.1200 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit a final control report to show compliance with the requirements of §117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)). The report must include a list of all units listed in §117.1200 of this title, showing:

(1) the NO_x emission specification resulting from application of §117.1205 of this title for each non-exempt unit;

(2) the section under which NO_x compliance is being established for units specified in paragraph (1) of this subsection, either:

(A) §117.1205 of this title;

(B) §117.1215 of this title (relating to Alternative System-Wide Emission Specifications);

(C) §117.1225 of this title (relating to Alternative Case Specific Specifications); or

(D) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(3) the method of NO_x control for each unit;

(4) the emissions measured by testing required in §117.1235 of this title (relating to Initial Demonstration of Compliance);

(5) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1235 of this title that is not being submitted concurrently with the final compliance report; and

(6) the specific rule citation for any unit with a claimed exemption from the emission specifications of this division.

(b) For sources complying with §117.1215 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall:

(1) assign to each affected unit the maximum NO_x emission rate, expressed in units of pounds per million British thermal units heat input on:

(A) a rolling 24-hour average and rolling 30-day average for gaseous fuel firing; and

(B) a rolling 24-hour average for oil or coal firing;

(2) submit a list to the executive director for approval of:

(A) the maximum allowable NO_x emission rates identified in paragraph (1) of this subsection; and

(B) the maximum rated capacity for each unit;

(3) submit calculations used to calculate the system-wide average in accordance with §117.1215(e) of this title; and

(4) maintain a copy of the approved list of emission limits for verification of continued compliance with the requirements of §117.1215 of this title.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using

continuous emissions monitoring system or predictive emissions monitoring system and complying with an emission limit on a rolling 30-day average, according to the applicable schedule given in §117.9120 of this title.

§117.1254. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of utility boilers listed in §117.1200 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit to the executive director a final control report to show compliance with the requirements of §117.1210 of this title (relating to Emission Specifications for Attainment Demonstration). The report must include:

(1) the section under which NO_x compliance is being established for the utility boilers within the electric generating system, either:

(A) Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program); and

(B) §117.1220 of this title (relating to System Cap); and as applicable,

(C) §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(2) the methods of NO_x control for each utility boiler;

(3) the emissions measured by testing required in §117.1235 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1235 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any utility boiler with a claimed exemption from the emission specifications of §117.1210 of this title.

(b) For sources complying with §117.1220 of this title, in addition to the requirements of subsection (a) of this section, the owner or operator shall submit:

(1) the calculations used to calculate the 30-day average and maximum daily system cap allowable emission rates;

(2) a list containing, for each unit in the cap:

(A) the average daily heat input, H_i, specified in §117.1220(c)(1) of this title;

(B) the maximum daily heat input, H_{mi}, specified in §117.1220(c)(2) of this title;

(C) the method of monitoring emissions; and

(D) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the values of H_i and H_{mi}.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9120 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources). The plan must be updated with any emission compliance measurements submitted for units using continuous emissions monitoring system or predictive emissions monitoring system and complying with the system cap rolling 30-day average emission limit, according to the applicable schedule given in §117.9120 of this title.

§117.1256. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the requirements and the final compliance dates of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources). For sources complying with §§117.1205, 117.1210, or 117.1215 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT); Emission Specifications for Attainment Demonstration; and Alternative System-Wide Emission Specifications), replacement new units may be included in the control plan. The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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DIVISION 4. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA UTILITY ELECTRIC GENERATION SOURCES

30 TAC §§117.1300, 117.1303, 117.1310, 117.1325, 117.1335, 117.1340, 117.1345, 117.1350, 117.1354, 117.1356

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the

commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.1300. Applicability.

(a) The provisions of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) apply to utility boilers, auxiliary steam boilers, stationary gas turbines, and duct burners used in turbine exhaust ducts used in an electric power generating system, as defined in §117.10 of this title (relating to Definitions) and that is located within the Dallas-Fort Worth eight-hour ozone nonattainment area and is owned or operated by:

(1) a municipality or a Public Utility Commission of Texas (PUC) regulated utility, or any of their successors, regardless of whether the successor is a municipality or is regulated by the PUC; or

(2) an electric cooperative, independent power producer, municipality, river authority, or public utility.

(b) The provisions of this division are applicable for the life of each affected unit within an electric power generating system or until this division or sections of this title that are applicable to an affected unit are rescinded.

§117.1303. Exemptions.

(a) Emission specifications for attainment demonstrations. Units exempt from the provisions of §117.1310 and §117.1340 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration; and Continuous Demonstration of Compliance), except as specified in §117.1340(i) or (j) of this title, include the following:

(1) any new auxiliary steam boiler or stationary gas turbines placed into service after November 15, 1992;

(2) any auxiliary steam boiler with an annual heat input less than or equal to $2.2(10^{11})$ British thermal units per year; or

(3) stationary gas turbines and engines that are:

(A) used solely to power other engines or gas turbines during startups; or

(B) demonstrated to operate less than 850 hours per year, based on a rolling 12-month average.

(b) Emergency fuel oil firing.

(1) The emissions specifications of §117.1310 of this title do not apply during an emergency operating condition declared by the Electric Reliability Council of Texas, or any other emergency operating condition that necessitates oil firing. All findings that emergency operating conditions exist are subject to the approval of the executive director.

(2) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction verbal notification as soon as possible but no later than 48 hours after declaration of the emergency. Verbal notification must identify the anticipated date and time oil firing will begin, duration of the emergency period, affected oil-fired equipment, and quantity of oil to be fired in each unit, and must be followed by written notification containing this information no later than five days after declaration of the emergency.

(3) The owner or operator of an affected unit shall give the executive director and any local air pollution control agency having jurisdiction final written notification as soon as possible but no later than two weeks after the termination of emergency fuel oil firing. Final written notification must identify the actual dates and times that oil firing began and ended, duration of the emergency period, affected oil-fired equipment, and quantity of oil fired in each unit.

§117.1310. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) Nitrogen oxides (NO_x) emission specifications. The owner or operator of any utility boiler, auxiliary steam boiler, or stationary gas turbine subject to this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) shall not allow the discharge into the atmosphere, emissions of NO_x in excess of the following:

(1) utility boilers:

(A) 0.06 pounds per million British thermal units (lb/MMBtu) heat input from utility boilers that are part of a small utility system, as defined in §117.10 of this title (relating to Definitions):

(i) on a rolling 24-hour average basis during the months of March through October of each calendar year; and

(ii) on a rolling 30-day average basis during the months of November, December, January, and February of each calendar year;

(B) 0.033 lb/MMBtu heat input from utility boilers that are part of a large utility system, as defined in §117.10 of this title:

(i) on a rolling 24-hour average basis during the months of March through October of each calendar year; and

(ii) on a rolling 30-day average basis during the months of November, December, January, and February of each calendar year; or

(C) 0.50 pounds per megawatt-hour output on an annual average basis;

(2) auxiliary steam boilers:

(A) 0.26 lb/MMBtu heat input on a rolling 24-hour average and 0.20 lb/MMBtu heat input on a 30-day rolling average while firing natural gas or a combination of natural gas and waste oil;

(B) 0.30 lb/MMBtu heat input on a rolling 24-hour averaging period while firing fuel oil only;

(C) the heat input weighted average of the applicable emission specifications specified in subparagraphs (A) and (B) of this paragraph on a rolling 24-hour averaging period while firing a mixture of natural gas and fuel oil, as follows:
Figure: 30 TAC §117.1310(a)(2)(C)

(D) for each auxiliary steam boiler that is an affected facility as defined by New Source Performance Standards (NSPS) 40 Code of Federal Regulations Part 60, Subparts D, Db, or Dc, the applicable NSPS NO_x emission limit, unless the boiler is also subject to a more stringent permit emission limit, in which case the more stringent emission limit applies. Each auxiliary steam boiler subject to an emission specification under this subparagraph is not subject to the emission specifications of subparagraphs (A), (B), or (C) of this paragraph.

(3) stationary gas turbines:

(A) with a megawatt (MW) rating greater than or equal to 30 MW and an annual electric output in megawatt-hr (MW-hr) of greater than or equal to the product of 2,500 hours and the MW rating of the unit, NO_x emissions in excess of a block one-hour average of:

(i) 42 parts per million by volume (ppmv) at 15% oxygen (O_2), dry basis, while firing natural gas; and

(ii) 65 ppmv at 15% O_2, dry basis, while firing fuel oil; and

(B) used for peaking service with an annual electric output in MW-hr of less than the product of 2,500 hours and the MW rating of the unit NO_x emissions in excess of a block one-hour average of:

(i) 0.20 lb/MMBtu heat input while firing natural gas; and

(ii) 0.30 lb/MMBtu heat input while firing fuel oil.

(b) Related emissions. The owner or operator of any unit subject to the emission specifications of subsection (a) of this section shall not allow emission in excess of the following, except as provided in §117.1325 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO):

(A) for utility boilers or auxiliary steam boilers, 400 ppmv at 3.0% O_2, dry (or alternatively, 0.30 lb/MMBtu heat input for gas-fired units and 0.31 lb/MMBtu heat input for oil-fired units), based on:

(i) a one-hour average for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(ii) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for CO; and

(B) for any stationary gas turbine with a MW rating greater than or equal to 10 MW, CO emissions in excess of a block one-hour average of 132 ppmv at 15% O_2, dry basis; and

(2) ammonia:

(A) for units that inject urea or ammonia into the exhaust stream for NO_x control, 10 ppmv, at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts), based on:

(i) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(ii) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia; and

(B) for all other units, 20 ppmv based on a block one-hour averaging period.

(c) Compliance flexibility.

(1) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section.

(2) Section 117.1325 of this title is not an applicable method of compliance with the NO_x emission specifications of this section.

(3) An owner or operator may petition the executive director for an alternative to the CO or ammonia specifications of this section in accordance with §117.1325 of this title.

§117.1325. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the applicable requirements the carbon monoxide (CO) or ammonia emission specifications of §117.1310(b) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.1310(b) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.1310 of this title, as applicable; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1335. Initial Demonstration of Compliance.

(a) The owner or operator of all units subject to the emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide (CO), and oxygen (O_2) emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedules specified in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division. Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.1340 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.1340 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows.

(1) To comply with the NO_x emission specification in pounds per million British thermal units (lb/MMBtu) on a rolling 30-day average, NO_x emissions from a unit are monitored for 30 successive unit operating days and the 30-day average emission rate is used to determine compliance with the NO_x emission specification. The 30-day average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 30-day test period.

(2) To comply with the NO_x emission specification in lb/MMBtu on a rolling 24-hour average, NO_x emissions from a unit are monitored for 24 consecutive operating hours and the 24-hour average emission rate is used to determine compliance with the NO_x emission specification. The 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period. Compliance with the NO_x emission specification for fuel oil firing must be determined based on the first 24 consecutive operating hours a unit fires fuel oil.

(3) To comply with the NO_x emission specification in pounds per hour or parts per million by volume at 15% O_2 dry basis, on a block one-hour average, any one-hour period while operating at the maximum rated capacity, or as near thereto as practicable, after CEMS or PEMS certification testing required in §117.1340 of this title is used to determine compliance with the NO_x emission specification.

(4) To comply with the NO_x emission specification in pounds per megawatt-hour output on an annual average basis, NO_x emissions from the unit are monitored in accordance with §117.1340(a) and (k) of this title. The annual average is calculated as the average of all hourly emission data recorded by the monitoring system. The averaging period for demonstrating initial compliance with the emission specification in §117.1310(a)(1)(C) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) is from March 1, 2009, through February 28, 2010.

(5) To comply with the CO emission specification in parts per million by volume on a rolling 24-hour average, CO emissions from a unit are monitored for 24 consecutive hours and the rolling 24-hour average emission rate is used to determine compliance with the CO emission specification. The rolling 24-hour average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during the 24-hour test period.

§117.1340. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources), shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis. Each NO_x monitor (CEMS or PEMS) is subject to the relative accuracy test audit relative accuracy requirements of 40 Code of Federal Regulations (CFR) Part 75, Appendix B, Figure 2, except the concentration options (parts per million by volume (ppmv) and pound per million British thermal units (lb/MMBtu)) do not apply. Each NO_x monitor must meet either the relative accuracy percent requirement of 40 CFR Part 75, Appendix B, Figure 2, or an alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value.

(b) Carbon monoxide (CO) monitoring. The owner or operator shall monitor CO exhaust emissions from each unit subject to the emission specifications of this division using one or more of the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring).

(c) Ammonia monitoring requirements. The owner or operator of units that are subject to the ammonia emission specification of §117.1310(b)(2)(A) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the ammonia monitoring requirements of §117.8130 of this title (relating to Ammonia Monitoring).

(d) CEMS requirements. The owner or operator of any CEMS used to meet a pollutant monitoring requirement of this section shall comply with the requirements of §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(e) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(f) Auxiliary steam boilers. The owner or operator of each auxiliary steam boiler shall:

(1) install, calibrate, maintain, and operate a CEMS in accordance with this section; or

(2) comply with the appropriate (considering boiler maximum rated capacity and annual heat input) industrial boiler monitoring requirements of §117.440 of this title (relating to Continuous Demonstration of Compliance).

(g) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of this division.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission limitations of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title.

(h) Stationary gas turbine monitoring. The owner or operator of each stationary gas turbine subject to the emission specifications of §117.1310 of this title, instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatts (MW) or peaking gas turbines (as defined in §117.10 of this title (relating to Definitions)) that use steam or water injection to comply with the emission specifications of §117.1310(a)(3) of this title:

(A) install, calibrate, maintain and operate a CEMS or PEMS in compliance with this section; or

(B) install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ±5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the applicable emission specification of §117.1310 of this title; and

(2) for stationary gas turbines subject to the emission specifications of §117.1310 of this title, install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section.

(i) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. In lieu of installing a totalizing fuel flow meter on a unit, an owner or operator may opt to assume fuel consumption at maximum design fuel flow rates during hours of the unit's operation. The units are:

(1) any unit subject to the emission specifications of §117.1310 of this title;

(2) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than 850 hours per year; and

(3) any unit claimed exempt from the emission specifications of this division using the low annual capacity factor exemption of §117.1303(a)(2) of this title (relating to Exemptions).

(j) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.1303(a)(3) of this title shall record the operating time with an elapsed run time meter.

(k) Monitoring for output-based NO_x emission specification. The owner or operator of any unit that complies with the optional output-based NO_x emission specification in §117.1310(a)(1)(C) of this title, shall comply with the following:

(1) install, calibrate, maintain, and operate a system to continuously monitor, at least once every 15 minutes, and record the gross energy production of the unit in megawatt-hours;

(2) for each hour of operation, determine the total mass emission of NO_x, in pounds, from the unit using the NO_x monitoring requirements of subsection (a) of this section and the fuel monitoring requirements of subsection (i) of this section; and

(3) for each hour of operation, calculate and record the NO_x emissions in pounds per megawatt-hour using the monitoring specified in paragraphs (1) and (2) of this subsection.

(l) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the exemptions in §117.1303(a)(2) or (3) of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of this division is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(m) Data used for compliance. After the initial demonstration of compliance required by §117.1335 of this title (relating to Initial Demonstration of Compliance), the methods required in this section must be used to determine compliance with the emission specifications of §117.1310 of this title. Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

§117.1345. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) shall submit notification to the appropriate regional office and any local air pollution control agency having jurisdiction as follows:

(1) written notification of the date of any testing conducted under §117.1335 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date; and

(2) written notification of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.1340 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the Office of Compliance and Enforcement, the appropriate regional office, and any local air pollution control agency having jurisdiction a copy of any testing conducted under §117.1335 of this title or any CEMS or PEMS performance evaluation conducted under §117.1340 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedules specified in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

(d) Semiannual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.1340 of this title shall report in writing to the executive director on a semiannual basis any exceedance of the applicable emission limitations in this division and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar semiannual period. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations (CFR) §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.1340 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.1335 of this title;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers), except as specified in paragraph (8) of this subsection;

(3) quantity and type of fuel burned;

(4) the injection rate of reactant chemicals (if applicable); and

(5) emission monitoring data, in accordance with §117.1340 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.1335 of this title;

(7) records of hours of operation; and

(8) for any unit that the owner or operator elects to comply with the output-based emission specification in §117.1310(a)(1)(C) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration):

(A) hourly records of the gross energy production in MW-hr;

(B) records of hourly and annual average NO_x emissions in pounds per megawatt-hour (lb/MW-hr); and

(C) the averaging period for the annual average NO_x emissions in lb/MW-hr, for demonstrating continuous compliance is from January 1 through December 31 of each calendar year, beginning on January 1, 2010.

§117.1350. Initial Control Plan Procedures.

(a) The owner or operator of any unit at a major source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is subject to §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall submit an initial control plan. The control plan must include:

(1) a list of all combustion units at the account that are listed in §117.1310 of this title. The list must include for each unit:

(A) the maximum rated capacity;

(B) anticipated annual capacity factor;

(C) estimated or measured NO_x emission data in the units associated with the category of equipment from §117.1310 of this title;

(D) the method of determination for the NO_x emission data required by subparagraph (C) of this paragraph;

(E) the facility identification number and emission point number as submitted to the Industrial Emissions Assessment Section of the commission; and

(F) the emission point number as listed on the Maximum Allowable Emissions Rate Table of any applicable commission permit;

(2) identification of all units with a claimed exemption from the emission specifications §117.1310 of this title and the rule basis for the claimed exemption;

(3) a list of units to be controlled and the type of control to be applied for all such units, including an anticipated construction schedule;

(4) for units required to install totalizing fuel flow meters in accordance with §117.1340 of this title (relating to Continuous Demonstration of Compliance), indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter; and

(5) for units required to install continuous emissions monitoring systems or predictive emissions monitoring systems in accordance with §117.1340 of this title, indication of whether the devices are currently in operation, and if so, whether they have been installed as a result of the requirements of this chapter.

(b) The initial control plan must be submitted to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office by the applicable date specified for initial control plans in §117.9130 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

(c) For units located in Dallas, Denton, Collin, and Tarrant Counties subject to §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration), the owner or operator may elect to submit the most recent revision of the final control plan required by §117.1154 of this title (relating to Final Control Plan Procedures for

Attainment Demonstration Emission Specifications) in lieu of the initial control plan required by subsection (a) of this section.

§117.1354. Final Control Plan Procedures for Attainment Demonstration Emission Specifications.

(a) The owner or operator of utility boilers listed in §117.1300 of this title (relating to Applicability) at a major source of nitrogen oxides (NO_x) shall submit to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office, a final control report to show compliance with the requirements of §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration). The report must include:

(1) the methods of NO_x control for each utility boiler;

(2) the emissions measured by testing required in §117.1335 of this title (relating to Initial Demonstration of Compliance);

(3) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.1335 of this title that is not being submitted concurrently with the final compliance report; and

(4) the specific rule citation for any utility boiler with a claimed exemption from the emission specification of §117.1310 of this title.

(b) The report must be submitted by the applicable date specified for final control plans in §117.9130 of this title (relating to Compliance Schedule Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources).

§117.1356. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specifications and the final compliance dates of this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources). Replacement new units may be included in the control plan. The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606722
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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SUBCHAPTER D. COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS

DIVISION 1. HOUSTON-GALVESTON-BRAZORIA OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §§117.2000, 117.2003, 117.2010, 117.2025, 117.2030, 117.2035, 117.2045

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.2000. Applicability.

This division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources) applies in the Houston-Galveston-Brazoria ozone nonattainment area to the following equipment at any stationary source of nitrogen oxides (NO_x) that is not a major source of NO_x:

(1) boilers and process heaters;

(2) stationary, reciprocating internal combustion engines; and

(3) stationary gas turbines, including duct burners.

§117.2003. Exemptions.

(a) This division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources) does not apply to the following, except as specified in §§117.2030(c), 117.2035(g), and 117.2045(b) and (c) of this title (relating to Operating Requirements; Monitoring and Testing Requirements; and Recordkeeping and Reporting Requirements):

(1) boilers and process heaters with a maximum rated capacity of 2.0 million British thermal units per hour (MMBtu/hr) or less;

(2) the following stationary engines:

(A) engines with a horsepower (hp) rating of less than 50 hp;

(B) engines used in research and testing;

(C) engines used for purposes of performance verification and testing;

(D) engines used solely to power other engines or gas turbines during startups;

(E) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after October 1, 2001, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(F) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(G) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(H) diesel engines placed into service before October 1, 2001, that:

(i) operate less than 100 hours per year, based on a rolling 12-month average; and

(ii) have not been modified, reconstructed, or relocated on or after October 1, 2001. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(I) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after October 1, 2001, that:

(i) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(ii) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(3) stationary gas turbines rated at less than 1.0 megawatt with initial start of operation on or before October 1, 2001.

(b) At any stationary source of nitrogen oxides that is not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), the following are exempt from the requirements of this division, except for the totalizing fuel flow requirements of §117.2035(a) and (d) and §117.2045(a)(1) of this title:

(1) any boiler or process heater with a maximum rated capacity greater than 2.0 MMBtu/hr and less than 5.0 MMBtu/hr that has an annual heat input less than or equal to 1.8 (10^9) British thermal units (Btu) per calendar year; and

(2) any boiler or process heater with a maximum rated capacity equal to or greater than 5.0 MMBtu/hr that has an annual heat input less than or equal to 9.0 (10^9) Btu per calendar year.

§117.2010. Emission Specifications.

(a) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), the nitrogen oxides (NO_x) emission rate values used to determine allocations for Chapter 101, Subchapter H, Division 3 of this title must be the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the emission specifications in subsection (c) of this section. The averaging time must be as specified in Chapter 101, Subchapter H, Division 3 of this title.

(b) For sources that are not subject to Chapter 101, Subchapter H, Division 3 of this title, NO_x emissions are limited to the lower of any applicable permit limit in a permit issued before January 2, 2001; any permit issued on or after January 2, 2001, that the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001; any limit in a permit by rule under which construction commenced by January 2, 2001; or the emission specifications in subsection (c) of this section. The averaging time must be as follows:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.2035(c) of this title (relating to Monitoring and Testing Requirements), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard; or

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in pounds per million British thermal units (lb/MMBtu); or

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.2035(c) of this title, a block one-hour average, in the units of the applicable standard.

(c) The following NO_x emission specifications must be used in conjunction with subsection (a) of this section to determine allocations for Chapter 101, Subchapter H, Division 3 of this title, or in conjunction with subsection (b) of this section to establish unit-by-unit emission specifications, as appropriate:

(1) from boilers and process heaters:

(A) gas-fired, 0.036 lb/MMBtu heat input (or alternatively, 30 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry basis); and

(B) liquid-fired, 0.072 lb/MMBtu heat input (or alternatively, 60 ppmv at 3.0% O_2, dry basis);

(2) from stationary, gas-fired, reciprocating internal combustion engines:

(A) fired on landfill gas, 0.60 gram per horsepower-hour (g/hp-hr); and

(B) all others, 0.50 g/hp-hr;

(3) from stationary, dual-fuel, reciprocating internal combustion engines, 5.83 g/hp-hr;

(4) from stationary, diesel, reciprocating internal combustion engines:

(A) placed into service before October 1, 2001, that have not been modified, reconstructed, or relocated on or after October 1, 2001, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(B) for engines not subject to subparagraph (A) of this paragraph:

(i) with a horsepower (hp) rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2003, 6.9 g/hp-hr;

(II) on or after October 1, 2003, but before October 1, 2007, 5.0 g/hp-hr; and

(III) on or after October 1, 2007, 3.3 g/hp-hr;

(ii) with a horsepower rating of 100 hp or greater, but less than 175 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;

(II) on or after October 1, 2002, but before October 1, 2006, 4.5 g/hp-hr; and

(III) on or after October 1, 2006, 2.8 g/hp-hr;

(iii) with a horsepower rating of 175 hp or greater, but less than 300 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2002, 6.9 g/hp-hr;

(II) on or after October 1, 2002, but before October 1, 2005, 4.5 g/hp-hr; and

(III) on or after October 1, 2005, 2.8 g/hp-hr;

(iv) with a horsepower rating of 300 hp or greater, but less than 600 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and

(II) on or after October 1, 2005, 2.8 g/hp-hr;

(v) with a horsepower rating of 600 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 4.5 g/hp-hr; and

(II) on or after October 1, 2005, 2.8 g/hp-hr; and

(vi) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated:

(I) on or after October 1, 2001, but before October 1, 2005, 6.9 g/hp-hr; and

(II) on or after October 1, 2005, 4.5 g/hp-hr;

(5) from stationary gas turbines (including duct burners), 0.15 lb/MMBtu; and

(6) as an alternative to the emission specifications in paragraphs (1) - (5) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu heat input. For units placed into service on or before January 1, 1997, the 1997 - 1999 average annual capacity factor must be used to determine whether the unit is eligible for the emission specification of this paragraph. For units placed into service after January 1, 1997, the annual capacity factor must be calculated from two consecutive years in the first five years of operation to determine whether the unit is eligible for the emission specification of this paragraph, using the same two consecutive years chosen for the activity level baseline. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions).

(d) The maximum rated capacity used to determine the applicability of the emission specifications in subsection (c) of this section must be:

(1) the greater of the following:

(A) the maximum rated capacity as of December 31, 2000; or

(B) the maximum rated capacity after December 31, 2000; or

(2) alternatively, the maximum rated capacity authorized by a permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) on or after January 2, 2001, for which the owner or operator submitted an application determined to be administratively complete by the executive director before January 2, 2001, provided that the maximum rated capacity authorized by the permit issued on or after January 2, 2001, is no less than the maximum rated capacity represented in the permit application as of January 2, 2001.

(e) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, is classified as a stationary gas-fired engine for the purposes of this chapter.

(f) Changes after December 31, 2000, to a unit subject to an emission specification in subsection (c) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to an emission specification in subsection (c) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare, is only allowed if:

(1) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements of §117.2035(c) of this title, or through stack testing that meets the requirements of §117.2035(e) of this title; and

(2) either of the following conditions is met:

(A) for sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, a deduction in allowances equal to the increase in NO_x emissions at the non-ESAD unit is made as specified in §101.354 of this title (relating to Allowance Deductions); or

(B) for sources that are not subject to Chapter 101, Subchapter H, Division 3 of this title, emission credits equal to the increase in NO_x emissions at the non-ESAD unit are obtained and used in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(g) A source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but at any time after December 31, 2000, becomes a major source, is from that time forward always classified as a major source for purposes of this chapter.

(h) The availability under subsection (c)(6) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (c)(6) of this section than would otherwise apply to the unit.

(i) No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (c) of this section, emissions in excess of the following, except as provided in §117.2025 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO), 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts) and gas-fired lean-burn engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

§117.2025. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the carbon monoxide (CO) or ammonia specifications of §117.2010(i) of this title (relating to Emission Specifications), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.2010(i) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.2010 of this title; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply.

§117.2030. Operating Requirements.

(a) The owner or operator shall operate any unit subject to §117.2010 of this title (relating to Emission Specifications) in compliance with those requirements.

(b) All units subject to §117.2010 of this title must be operated so as to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(4) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission limits.

(5) Each stationary internal combustion engine must be checked for proper operation according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

(c) No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.2035. Monitoring and Testing Requirements.

(a) Totalizing fuel flow meters.

(1) The owner or operator of each unit subject to §117.2010 of this title (relating to Emission Specifications) and subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), or of each unit claimed exempt under §117.2003(b) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic

data from continuous fuel flow meters is an acceptable totalizer. The owner or operator of units with totalizing fuel flow meters installed prior to March 31, 2005, that do not meet the accuracy requirements of this subsection shall either recertify or replace existing meters to meet the ±5% accuracy required as soon as practicable, but no later than March 31, 2007. For the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(2) The following are alternatives to the fuel flow monitoring requirements of this subsection.

(A) Units operating with a nitrogen oxides (NO_x) and diluent continuous emissions monitoring system (CEMS) under subsection (c) of this section may monitor stack exhaust flow using the flow monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(B) Units that vent to a common stack with a NO_x and diluent CEMS under subsection (c) of this section may use a single totalizing fuel flow meter.

(C) Diesel engines operating with run time meters may meet the fuel flow monitoring requirements of this subsection through monthly fuel use records.

(D) Units of the same category of equipment subject to Chapter 101, Subchapter H, Division 3 of this title may share a single totalizing fuel flow meter provided:

(i) the owner or operator performs a stack test in accordance with subsection (e) of this section for each unit sharing the totalizing fuel flow meter; and

(ii) the testing results from the unit with the highest emission rate (in pounds per million British thermal units or grams per horsepower-hour) are used for reporting purposes in §101.359 of this title (relating to Reporting) for all units sharing the totalizing fuel flow meter.

(E) The owner or operator of a unit or units claimed exempt under §117.2003(b) of this title, located at an independent school district may demonstrate compliance with the exemption by the following:

(i) in addition to the records required by §117.2045(a)(1) of this title (relating to Recordkeeping and Reporting Requirements), maintain the following monthly records in either electronic or written format. These records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction;

(I) total fuel usage for the entire site;

(II) the estimated hours of operation for each unit;

(III) the estimated average operating rate (e.g., a percentage of maximum rated capacity) for each unit; and

(IV) the estimated fuel usage for each unit;, and

(ii) within 60 days of written request by the executive director, submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit.

(F) The owner or operator of units claimed exempt under §117.2003(b) of this title may share a single totalizing fuel flow meter to demonstrate compliance with the exemption, provided that:

(i) all affected units at the site qualify for the exemption under §117.2003(b) of this title; and

(ii) the total fuel usage for all units at the site is less than:

(I) the annual fuel usage limitation in §117.2003(b)(1) of this title; or

(II) the annual fuel usage limitation in §117.2003(b)(2) of this title when all affected units at the site are equal to or greater than 5.0 million British thermal units per hour.

(b) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(c) NO_x monitors. If the owner or operator installs a CEMS or predictive emissions monitoring system (PEMS), it must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).

(d) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9200 of this title (relating to Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources).

(e) Testing requirements. The owner or operator of any unit subject to §117.2010 of this title shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2010(i)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 CFR Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's

written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with §117.2010 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) The NO_x emission rate determined by the retesting must establish a new emission factor to be used to calculate actual emissions from the date of the retesting forward. Until the date of the retesting, the previously determined emission factor must be used to calculate actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(8) Testing must be performed in accordance with the schedule specified in §117.9200 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(f) Emission allowances.

(1) For sources that are subject to Chapter 101, Subchapter H, Division 3 of this title, the NO_x testing and monitoring data of subsections (a) - (e) of this section, together with the level of activity, as defined in §101.350 of this title (relating to Definitions), must be used to establish the emission factor calculating actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(2) The emission factor in subsection (e)(7) of this section or paragraph (1) of this subsection is multiplied by the unit's level of activity to determine the unit's actual emissions for compliance with Chapter 101, Subchapter H, Division 3 of this title.

(g) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2003(a)(2)(E), (H), or (I) of this title shall record the operating time with an elapsed run time meter. Any run time meter installed on or after October 1, 2001, must be non-resettable.

§117.2045. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2010 of this title (relating to Emission Specifications) or claimed exempt under §117.2003(b) of this title (relating to Exemptions) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) records of annual fuel usage;

(2) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2035(c) of this title (relating to Monitoring and Testing Requirements), monitoring records of:

(A) hourly emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions and fuel usage (or stack exhaust flow) for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to §117.2010 of this title, records of:

(A) emissions measurements required by §117.2030(b)(5) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) records of carbon monoxide measurements specified in §117.2030(b)(5) of this title;

(5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(6) records of the results of performance testing, including the testing conducted in accordance with §117.2035(e) of this title.

(b) Records for exempt engines. Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2003(a)(2)(E), (H), or (I) of this title or §117.2030(b)(5) of this title. In addition, for each engine claimed exempt under §117.2003(a)(2)(E) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 2. DALLAS-FORT WORTH EIGHT-HOUR OZONE NONATTAINMENT AREA MINOR SOURCES

30 TAC §§117.2100, 117.2103, 117.2110, 117.2125, 117.2130, 117.2135, 117.2145

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.2100. Applicability.

This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) applies in the Dallas-Fort Worth eight-hour ozone nonattainment area to the following equipment at any stationary source of nitrogen oxides (NO_x) that is not a major source of NO_x:

(1) boilers and process heaters;

(2) stationary, reciprocating internal combustion engines; and

(3) stationary gas turbines, including duct burners.

§117.2103. Exemptions.

(a) This division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) does not apply to the following, except as specified in §§117.2130(c), 117.2135(e), and 117.2145(b) and (c) of this title (relating to Operating Requirements; Monitoring, Notification, and Testing Requirements; and Recordkeeping and Reporting Requirements):

(1) boilers and process heaters with a maximum rated capacity of 2.0 million British thermal units per hour (MMBtu/hr) or less;

(2) the following stationary engines:

(A) engines with a horsepower (hp) rating of less than 50 hp;

(B) engines used in research and testing;

(C) engines used for purposes of performance verification and testing;

(D) engines used solely to power other engines or gas turbines during startups;

(E) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average. Any new, modified, reconstructed, or relocated stationary diesel engine placed into service on or after June 1, 2007, is ineligible for this exemption. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations (CFR) §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account;

(F) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(G) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(H) diesel engines placed into service before June 1, 2007, that:

(i) operate less than 100 hours per year, based on a rolling 12-month average; and

(ii) have not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this clause, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(I) new, modified, reconstructed, or relocated stationary diesel engines placed into service on or after June 1, 2007, that:

(i) operate less than 100 hours per year, based on a rolling 12-month average, in other than emergency situations; and

(ii) meet the corresponding emission standard for non-road engines listed in 40 CFR §89.112(a), Table 1 (October 23, 1998) and in effect at the time of installation, modification, reconstruction, or relocation. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title and 40 CFR §60.15 (December 16, 1975),

respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title, a used engine from anywhere outside that account; and

(3) stationary gas turbines rated at less than 1.0 megawatt with initial start of operation on or before June 1, 2007.

(b) The following are exempt from the requirements of this division, except for the requirements of §117.2135(a) and (d) and §117.2145(a)(1) of this title:

(1) any boiler or process heater with a maximum rated capacity greater than 2.0 MMBtu/hr and less than 5.0 MMBtu/hr that has an annual heat input less than or equal to 1.8 (10^9) British thermal units (Btu) per calendar year, or has an average heat input less than or equal to 1.5 (10^8) Btu per month for the months of May through October; and

(2) any boiler or process heater with a maximum rated capacity equal to or greater than 5.0 MMBtu/hr that has an annual heat input less than or equal to 9.0 (10^9) Btu per calendar year, or has an average heat input less than or equal to 7.5 (10^8) Btu per month for the months of May through October.

§117.2110. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) The owner or operator of any source subject to this division (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) shall not allow the discharge into the atmosphere emissions of nitrogen oxides (NO_x) in excess of the following emission specifications:

(1) from boilers and process heaters:

(A) gas-fired, 0.036 pounds per million British thermal units (lb/MMBtu) heat input (or alternatively, 30 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry basis); and

(B) liquid-fired, 0.072 lb/MMBtu heat input (or alternatively, 60 ppmv at 3.0% O_2, dry basis);

(2) from stationary, gas-fired, reciprocating internal combustion engines:

(A) fired on landfill gas, 0.60 grams per horsepower-hour (g/hp-hr); and

(B) all others, 0.50 g/hp-hr;

(3) from stationary, dual-fuel, reciprocating internal combustion engines, 5.83 g/hp-hr;

(4) from stationary, diesel, reciprocating internal combustion engines:

(A) placed into service before June 1, 2007, that have not been modified, reconstructed, or relocated on or after June 1, 2007, the lower of 11.0 g/hp-hr or the emission rate established by testing, monitoring, manufacturer's guarantee, or manufacturer's other data. For the purposes of this paragraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(B) for engines not subject to subparagraph (A) of this paragraph:

(i) with a horsepower (hp) rating of 50 hp or greater, but less than 100 hp, that are installed, modified, reconstructed, or relocated:

(I) on or after June 1, 2007, but before January 1, 2008, 5.0 g/hp-hr; and

(II) on or after January 1, 2008, 3.3 g/hp-hr;

(ii) with a horsepower rating of 100 hp or greater, but less than or equal to 750 hp, that are installed, modified, reconstructed, or relocated on or after June 1, 2007, 2.8 g/hp-hr; and

(iii) with a horsepower rating of 750 hp or greater that are installed, modified, reconstructed, or relocated on or after June 1, 2007, 4.5 g/hp-hr;

(5) from stationary gas turbines (including duct burners), 0.15 lb/MMBtu; and

(6) as an alternative to the emission specifications in paragraphs (1) - (5) of this subsection for units with an annual capacity factor of 0.0383 or less, 0.060 lb/MMBtu heat input. For units placed into service on or before December 31, 2000, the annual capacity factor as of December 31, 2000, must be used to determine eligibility for the alternative emission specification of this paragraph. For units placed into service after December 31, 2000, a 12-month rolling average must be used to determine the annual capacity factor.

(b) The averaging time for the NO_x emission specifications of subsection (a) of this section is as follows:

(1) if the unit is operated with a NO_x continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) under §117.2135(c) of this title (relating to Monitoring, Notification, and Testing Requirements), either as:

(A) a rolling 30-day average period, in the units of the applicable standard;

(B) a block one-hour average, in the units of the applicable standard, or alternatively;

(C) a block one-hour average, in pounds per hour, for boilers and process heaters, calculated as the product of the boiler's or process heater's maximum rated capacity and its applicable limit in lb/MMBtu; or

(2) if the unit is not operated with a NO_x CEMS or PEMS under §117.2135(c) of this title, a block one-hour average, in the units of the applicable standard.

(c) The maximum rated capacity used to determine the applicability of the emission specifications in subsection (a) of this section must be the greater of the following:

(1) the maximum rated capacity as of December 31, 2000; or

(2) the maximum rated capacity after December 31, 2000.

(d) A unit's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, a unit that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, must be classified as a stationary gas-fired engine for the purposes of this chapter.

(e) Changes after December 31, 2000, to a unit subject to an emission specification in subsection (a) of this section (ESAD unit) that result in increased NO_x emissions from a unit not subject to an emission specification in subsection (a) of this section (non-ESAD unit), such as redirecting one or more fuel or waste streams containing chemical-bound nitrogen to an incinerator or a flare, is only allowed if:

(1) the increase in NO_x emissions at the non-ESAD unit is determined using a CEMS or PEMS that meets the requirements

of §117.2135(c) of this title, or through stack testing that meets the requirements of §117.2135(f) of this title; and

(2) emission credits equal to the increase in NO_x emissions at the non-ESAD unit are obtained and used in accordance with §117.9800 of this title (relating to Use of Emission Credits for Compliance).

(f) A source that met the definition of major source on December 31, 2000, is always classified as a major source for purposes of this chapter. A source that did not meet the definition of major source (i.e., was a minor source, or did not yet exist) on December 31, 2000, but becomes a major source at any time after December 31, 2000, is from that time forward always classified as a major source for purposes of this chapter.

(g) The availability under subsection (a)(6) of this section of an emission specification for units with an annual capacity factor of 0.0383 or less is based on the unit's status on December 31, 2000. Reduced operation after December 31, 2000, cannot be used to qualify for a more lenient emission specification under subsection (a)(6) of this section than would otherwise apply to the unit.

(h) No person shall allow the discharge into the atmosphere from any unit subject to NO_x emission specifications in subsection (a) of this section, emissions in excess of the following, except as provided in §117.2125 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO), 400 ppmv at 3.0% O_2, dry basis (or alternatively, 3.0 g/hp-hr for stationary internal combustion engines):

(A) on a rolling 24-hour averaging period, for units equipped with CEMS or PEMS for CO; and

(B) on a one-hour average, for units not equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of 10 ppmv at 3.0% O_2, dry, for boilers and process heaters; 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts) and gas-fired lean-burn engines; and 3.0% O_2, dry, for all other units, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(i) An owner or operator may use emission reduction credits as specified in §117.9800 of this title to comply with the NO_x emission specifications of this section.

§117.2125. Alternative Case Specific Specifications.

(a) Where an owner or operator can demonstrate that an affected unit cannot attain the carbon monoxide (CO) or ammonia specifications of §117.2110(h) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.2110(h) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.2110 of this title; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply.

§117.2130. Operating Requirements.

(a) The owner or operator shall operate any unit subject to the emission specifications of §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) in compliance with those specifications.

(b) All units subject to §117.2110 of this title must be operated so as to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the unit's operating or load range during normal operations. Such operational requirements include the following.

(1) Each boiler must be operated with oxygen (O_2), carbon monoxide (CO), or fuel trim.

(2) Each boiler and process heater controlled with forced flue gas recirculation (FGR) to reduce NO_x emissions must be operated such that the proportional design rate of FGR is maintained, consistent with combustion stability, over the operating range.

(3) Each unit controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(4) Each stationary internal combustion engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust O_2 or CO control and maintains AFR in the range required to meet the engine's applicable emission specifications.

(5) Each stationary internal combustion engine must be checked for proper operation according to §117.8140(b) of the title (relating to Emission Monitoring for Engines).

(c) No person shall start or operate any stationary diesel or dual-fuel engine for testing or maintenance between the hours of 6:00 a.m. and noon, except:

(1) for specific manufacturer's recommended testing requiring a run of over 18 consecutive hours;

(2) to verify reliability of emergency equipment (e.g., emergency generators or pumps) immediately after unforeseen repairs. Routine maintenance such as an oil change is not considered to be an unforeseen repair; or

(3) firewater pumps for emergency response training conducted in the months of April through October.

§117.2135. Monitoring, Notification, and Testing Requirements.

(a) Totalizing fuel flow meters.

(1) The owner or operator of any unit claimed exempt under §117.2103(b) of this title (relating to Exemptions) shall install, calibrate, maintain, and operate totalizing fuel flow meters with an accuracy of ±5%, to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. For

the purpose of compliance with this subsection for units having pilot fuel supplied by a separate fuel system or from an unmonitored portion of the same fuel system, the fuel flow to pilots may be calculated using the manufacturer's design flow rates rather than measured with a fuel flow meter. The calculated pilot fuel flow rate must be added to the monitored fuel flow when fuel flow is totaled.

(2) The following are alternatives to the fuel flow monitoring requirements of this subsection.

(A) The owner or operator of a unit or units claimed exempt under §117.2103(b) of this title, located at an independent school district may demonstrate compliance with the exemption by the following:

(i) in addition to the records required by §117.2145(a)(1) of this title (relating to Recordkeeping and Reporting Requirements), maintain the following monthly records in either electronic or written format. These records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction;

(I) total fuel usage for the entire site;

(II) the estimated hours of operation for each unit;

(III) the estimated average operating rate (e.g., a percentage of maximum rated capacity) for each unit; and

(IV) the estimated fuel usage for each unit; and

(ii) within 60 days of written request by the executive director, submit for review and approval all methods, engineering calculations, and process information used to estimate the hours of operation, operating rates, and fuel usage for each unit.

(B) The owner or operator of units claimed exempt under §117.2103(b) of this title may share a single totalizing fuel flow meter to demonstrate compliance with the exemption, provided that:

(i) all affected units at the site qualify for the exemption under §117.2103(b) of this title; and

(ii) the total fuel usage for all units at the site is less than:

(I) the annual or monthly fuel usage limitation, as applicable, in §117.2103(b)(1) of this title; or

(II) the annual or monthly fuel usage limitation, as applicable, in §117.2103(b)(2) of this title when all affected units at the site are equal to or greater than 5.0 million British thermal units per hour.

(b) Oxygen (O_2) monitors. If the owner or operator installs an O_2 monitor, the criteria in §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) should be considered the appropriate guidance for the location and calibration of the monitor.

(c) Nitrogen oxides (NO_x) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title. If a PEMS is used, the PEMS must predict the pollution emissions in the units of the applicable emission limitations of this division.

(d) Monitor installation schedule. Installation of monitors must be performed in accordance with the schedule specified in §117.9210 of this title (relating to Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources).

(e) Testing requirements. The owner or operator of any unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.

(1) Each unit must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) One of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.2110(h)(2) of this title for units that inject urea or ammonia into the exhaust stream for NO_x control.

(3) For units not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating engines, combustion turbines, boilers, and process heaters. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title.

(5) For units equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) Initial compliance with the emission specifications of §117.2110 of this title for units operating with CEMS or PEMS must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS.

(7) For units not operating with CEMS or PEMS, the following apply.

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls, low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(C) Stationary, reciprocating internal combustion engines not equipped with CEMS or PEMS must be periodically tested for NO_x and CO emissions as specified in §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(8) Testing must be performed in accordance with the schedule specified in §117.9210 of this title.

(9) All test reports must be submitted to the executive director for review and approval within 60 days after completion of the testing.

(10) The owner or operator of an affected unit in the Dallas-Fort Worth eight-hour ozone nonattainment area must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

(f) Run time meters. The owner or operator of any stationary diesel engine claimed exempt using the exemption of §117.2103(a)(2)(E), (H), or (I) of this title shall record the operating time with a non-resettable elapsed run time meter.

§117.2145. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a unit subject to §117.2110 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) or claimed exempt under §117.2103(b) of this title (relating to Exemptions) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for units claimed exempt under §117.2103(b) of this title, records of annual or monthly fuel usage, as applicable;

(2) for each unit using a continuous emission monitoring system (CEMS) or predictive emission monitoring system (PEMS) in accordance with §117.2135(c) of this title (relating to Monitoring, Notification, and Testing Requirements) monitoring records of:

(A) hourly emissions for units complying with an emission specification enforced on a block one-hour average; and

(B) daily emissions for units complying with an emission specification enforced on a rolling 30-day average. Emissions must be recorded in units of:

(i) pounds per million British thermal units (MMBtu) heat input; and

(ii) pounds or tons per day;

(3) for each stationary internal combustion engine subject to §117.2110 of this title, records of:

(A) emissions measurements required by §117.2130(b)(5) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(4) records of carbon monoxide (CO) measurements specified in §117.2130(b)(5) of this title;

(5) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems; and

(6) records of the results of performance testing, including the testing conducted in accordance with §117.2135(e) of this title.

(b) Records for exempt engines. Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.2103(a)(2)(E), (H), or (I) of this title or §117.2130(b)(5) of this title. In addition, for each engine claimed exempt under §117.2103(a)(2)(E) of this title, written records must be maintained of the purpose of engine operation and, if operation was for an emergency situation, identification of the type of emergency situation and the start and end times and date(s) of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(c) Records of operation for testing and maintenance. The owner or operator of each stationary diesel or dual-fuel engine shall maintain the following records for at least five years and make them available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction:

(1) date(s) of operation;

(2) start and end times of operation;

(3) identification of the engine; and

(4) total hours of operation for each month and for the most recent 12 consecutive months.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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SUBCHAPTER E. MULTI-REGION COMBUSTION CONTROL
DIVISION 1. UTILITY ELECTRIC GENERATION IN EAST AND CENTRAL TEXAS

30 TAC §§117.3000, 117.3003, 117.3005, 117.3010, 117.3020, 117.3025, 117.3035, 117.3040, 117.3045, 117.3054, 117.3056

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission

information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.3000. Applicability.

(a) The provisions of this division (relating to Utility Electric Generation in East and Central Texas) apply to each utility electric power boiler and stationary gas turbine (including duct burners used in turbine exhaust ducts) that:

(1) generates electric energy for compensation;

(2) is owned or operated by an electric cooperative, independent power producer, municipality, river authority, or public utility, or any of its successors;

(3) was placed into service before December 31, 1995; and

(4) is located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, or Wharton County.

(b) The provisions of §117.3005 of this title (relating to Gas-Fired Steam Generation) also apply in Palo Pinto County.

§117.3003. Exemptions.

The provisions of this division (relating to Utility Electric Generation in East and Central Texas), except as specified in §117.3040 and §117.3045 of this title (relating to Continuous Demonstration of Compliance; and Notification, Recordkeeping, and Reporting Requirements), do not apply to:

(1) utility electric power boilers or stationary gas turbines if the annual heat input does not exceed 2.2 (10^{11}) British thermal units per year, averaged over the three most recent calendar years;

(2) stationary gas turbines and auxiliary steam boilers that are:

(A) used solely to power other units during startups; or

(B) demonstrated to operate no more than an average of 10% of the hours of the year, averaged over the three most recent calendar years, and no more than 20% of the hours in a single calendar year; and

(3) each unit that generates electric energy primarily for internal use but that, averaged over the three most recent calendar years, sold less than one-third of its potential electrical output capacity to a utility power distribution system.

§117.3005. Gas-Fired Steam Generation.

(a) Subsections (b), (c), and (d) of this section (emission specifications adopted by the Texas Air Control Board in 1972) apply in Fannin, Hood, and Palo Pinto Counties. This section no longer applies in Fannin and Hood Counties after the applicable final compliance date specified in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas).

(b) No person shall allow emissions of nitrogen oxides (NO_x), calculated as nitrogen dioxide (NO_2), from any "opposed-fired" steam generating unit of more than 600,000 pounds per hour (lb/hr) maximum continuous steam capacity to exceed 0.7 pound per million British thermal units (lb/MMBtu) heat input, maximum two-hour average, at maximum steam capacity. An "opposed-fired" steam generating unit is defined as a unit having burners installed on two opposite vertical firebox surfaces.

(c) No person shall allow emissions of NO_x, calculated as NO_2, from any "front-fired" steam generating unit of more than 600,000 lb/hr maximum continuous steam capacity to exceed 0.5 lb/MMBtu heat input, maximum two-hour average, at maximum steam capacity. A "front-fired" steam generating unit is defined as a unit having all burners installed in a geometric array on one vertical firebox surface.

(d) No person shall allow emissions of NO_x, calculated as NO_2, from any "tangential-fired" steam generating unit of more than 600,000 lb/hr maximum continuous steam capacity to exceed 0.25 lb/MMBtu heat input, maximum two-hour average, at maximum steam capacity. A "tangential-fired" steam generating unit is defined as a unit having burners installed on all corners of the unit at various elevations.

(e) Existing gas-fired steam generating units of more than 600,000 lb/hr, but less than 1,100,000 lb/hr, maximum continuous steam capacity are exempt from the provisions of this section, provided the total steam generated from the unit during any one calendar year does not exceed 30% of the product of the maximum continuous steam capacity of the unit times the number of hours in a year. Written records of the amount of steam generated for each day's operation must be made on a daily basis and maintained for at least three years from the date of each entry. Such records must be made available upon request to representatives of the executive director, United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

§117.3010. Emission Specifications.

In accordance with the compliance schedule in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas), the owner or operator of each utility electric power boiler or stationary gas turbine (including duct burners used in turbine exhaust ducts) shall:

(1) ensure that emissions of nitrogen oxides (NO_x) do not exceed the following rates, in pounds per million British thermal units heat input on an annual (calendar year) average:

(A) electric power boilers:

(i) gas-fired, 0.14; and

(ii) coal-fired, 0.165;

(B) stationary gas turbines (including duct burners used in turbine exhaust ducts):

(i) subject to Texas Utilities Code (TUC), §39.264 (except units designated in accordance with TUC, §39.264(i)), 0.14;

(ii) not subject to TUC, §39.264, 0.15 (or alternatively, 42 parts per million by volume (ppmv) NO_x, adjusted to 15% oxygen (O_2), dry basis); and

(iii) units designated in accordance with TUC, §39.264(i), 0.15 (or alternatively, 42 ppmv NO_x, adjusted to 15% O_2, dry basis); and

(2) ensure that for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions do not exceed 10 ppmv at 3.0% O_2, dry, for boilers and 15% O_2, dry, for stationary gas turbines (including duct burners used in turbine exhaust ducts) from any unit subject to the NO_x emission specifications in paragraph (1) of this section, based on:

(A) a block one-hour averaging period for units not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

§117.3020. System Cap.

(a) An owner or operator may achieve compliance with the nitrogen oxides (NO_x) emission specifications of §117.3010 of this title (relating to Emission Specifications) by achieving equivalent NO_x emission reductions obtained by compliance with a system cap emission limitation in accordance with the requirements of this section.

(b) Each unit within an electric power generating system, as defined in §117.10 of this title (relating to Definitions), that would otherwise be subject to the NO_x emission specifications of §117.3010 of this title must be included in the system cap.

(c) The annual average emission cap must be calculated using the following equation.
Figure: 30 TAC §117.3020(c)

(d) The NO_x emissions monitoring required by §117.3040 of this title (relating to Continuous Demonstration of Compliance) for each unit in the system cap must be used to demonstrate continuous compliance with the system cap.

(e) For each operating unit, the owner or operator shall use one of the following methods to provide substitute emissions compliance data during periods when the NO_x monitor is off-line:

(1) if the NO_x monitor is a continuous emissions monitoring system (CEMS):

(A) subject to 40 Code of Federal Regulations (CFR) Part 75, use the missing data procedures specified in 40 CFR Part 75, Subpart D (Missing Data Substitution Procedures); or

(B) subject to 40 CFR Part 75, Appendix E, use the missing data procedures specified in 40 CFR Part 75, Appendix E, §2.5 (Missing Data Procedures);

(2) use Appendix E monitoring in accordance with §117.3040(e) of this title;

(3) if the NO_x monitor is a predictive emissions monitoring system (PEMS):

(A) use the methods specified in 40 CFR Part 75, Subpart D; or

(B) use calculations in accordance with §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources); or

(4) use the maximum emission rate as measured by the testing conducted in accordance with §117.3035(d) of this title (relating to Initial Demonstration of Compliance).

(f) The owner or operator of any unit subject to a system cap shall maintain daily records indicating the NO_x emissions and fuel usage from each unit and summations of total NO_x emissions and fuel usage for all units under the system cap on a daily basis. Records must also be retained in accordance with §117.3045 of this title (relating to Notification, Recordkeeping, and Reporting Requirements).

(g) The owner or operator of any unit subject to a system cap shall submit annual reports for the monitoring systems in accordance with §117.3045 of this title. The owner or operator shall also report any exceedance of the system cap emission limit in the annual report and shall include an analysis of the cause for the exceedance with appropriate data to demonstrate the amount of emissions in excess of the applicable limit and the necessary corrective actions taken by the company to assure future compliance.

(h) The owner or operator of any unit subject to a system cap shall demonstrate initial compliance with the system cap in accordance with the schedule specified in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas).

(i) A unit that is permanently retired or decommissioned and rendered inoperable may be included in the system cap emission limit, provided that the permanent shutdown occurred on or after January 1, 1999. The system cap emission limit is calculated in accordance with subsection (b) of this section.

(j) Emission reductions from shutdowns or curtailments that have been used for netting or offset purposes under the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) may not be included in the baseline for establishing the cap.

(k) For the purposes of determining compliance with the system cap emission limit, the contribution of each affected unit that is operating during a startup, shutdown, or emissions event as defined in §101.1 of this title (relating to Definitions) must be calculated from the NO_x emission rate measured by the NO_x monitor, if operating properly. If the NO_x monitor is not operating properly, the substitute data procedures identified in subsection (e) of this section must be used. If neither the NO_x monitor nor the substitute data procedure are operating properly, the owner or operator shall use the maximum daily rate measured during the initial demonstration of compliance, unless the owner or operator provides data demonstrating to the satisfaction of the executive director and United States Environmental Protection Agency that actual emissions were less than maximum emissions during such periods.

(l) An owner or operator of a source of NO_x in any of the east and central Texas attainment counties listed in §117.3000(4) of this title (relating to Applicability) who is participating in the system cap under this section (relating to System Cap) may exceed their system cap provided that the owner or operator is complying with the requirements of Chapter 101, Subchapter H, Division 1, 4, or 5 of this title (relating to Emission Credit Banking and Trading; Discrete Emission Credit Banking and Trading; and System Cap Trading).

§117.3025. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected unit cannot attain the ammonia specification of §117.3010(2) of this title (relating to Emission Specifications), the executive director may approve emission specifications different from the ammonia specification in §117.3010(2) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual unit;

(2) shall determine that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the

application of controls to meet the nitrogen oxides emission specifications of §117.3010 of this title; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply.

§117.3035. Initial Demonstration of Compliance.

(a) The owner or operator of all units that are subject to the emission specifications of §117.3010 of this title (relating to Emission Specifications) shall test the units as follows.

(1) The units must be tested for nitrogen oxides (NO_x), carbon monoxide, and oxygen emissions.

(2) Units that inject urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) Testing must be performed in accordance with the schedule specified in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas).

(b) The tests required by subsection (a) of this section must be used for determination of initial compliance with the emission specifications of this division (relating to Utility Electric Generation in East and Central Texas). Test results must be reported in the units of the applicable emission specifications and averaging periods. If compliance testing is based on 40 Code of Federal Regulations, Part 60, Appendix A reference methods, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(c) Continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.3040 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational before testing under subsection (a) of this section. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(d) Initial compliance with the emission specifications of this division for units operating with CEMS or PEMS in accordance with §117.3040 of this title must be demonstrated after monitor certification testing using the NO_x CEMS or PEMS as follows. To comply with the NO_x emission specification in pounds per million British thermal units on an annual average, NO_x emissions from a unit are monitored for each unit operating day in a calendar year, and the annual average emission rate is used to determine compliance with the NO_x emission specification. The annual average emission rate is calculated as the average of all hourly emissions data recorded by the monitoring system during a calendar year.

§117.3040. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitoring. The owner or operator of each unit subject to the emission specifications of this division (relating to Utility Electric Generation in East and Central Texas) shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS), predictive emissions monitoring system (PEMS), or other system specified in this section to measure NO_x on an individual basis.

(b) Carbon monoxide (CO) monitoring. If the owner or operator chooses to monitor CO exhaust emissions from a unit subject to the emission specifications of this division, the methods specified in §117.8120 of this title (relating to Carbon Monoxide (CO) Monitoring) should be considered appropriate guidance for determining CO emissions.

(c) Ammonia monitoring. For units that inject urea or ammonia into the exhaust stream for NO_x control, one of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring) must be used to demonstrate compliance with the ammonia emission specification of §117.3010(2) of this title (relating to Emission Specifications).

(d) CEMS requirements.

(1) Any CEMS required by this section must be installed, calibrated, maintained, and operated in accordance with 40 Code of Federal Regulations (CFR) Part 75 or Part 60, as applicable.

(2) One CEMS may be shared among units, provided:

(A) the exhaust stream of each unit is analyzed separately; and

(B) the CEMS meets the applicable certification requirements of paragraph (1) of this subsection for each exhaust stream.

(3) As an alternative to paragraph (2) of this subsection, for units that are included in a system cap under §117.3020 of this title (relating to System Cap):

(A) all bypass stacks must be monitored in order to quantify emissions directed through the bypass stack;

(B) one CEMS may be shared among units, provided:

(i) the exhaust stream of each stack is analyzed separately; and

(ii) the CEMS meets the certification requirements of paragraph (1) of this subsection for each stack while the CEMS is operating in the time-shared mode; and

(C) exhaust streams of units that vent to a common stack do not need to be analyzed separately.

(e) Acid rain peaking units. The owner or operator of each peaking unit as defined in 40 CFR §72.2, may:

(1) monitor operating parameters for each unit in accordance with 40 CFR Part 75, Appendix E, §1.1 or §1.2 and calculate NO_x emission rates based on those procedures; or

(2) use CEMS or PEMS in accordance with this section to monitor NO_x emission rates.

(f) PEMS requirements. The owner or operator of any PEMS used to meet a pollutant monitoring requirement of this section shall comply with the following. The required PEMS and fuel flow meters must be used to demonstrate continuous compliance with the emission specifications of §117.3010 of this title.

(1) The PEMS must predict the pollutant emissions in the units of the applicable emission specifications of this division.

(2) The PEMS must meet the requirements of §117.8110(b) of this title (relating to Emission Monitoring System Requirements for Utility Electric Generation Sources).

(g) Gas turbine monitoring. The owner or operator of each stationary gas turbine subject to the emission specifications of §117.3010 of this title, instead of monitoring emissions in accordance with the monitoring requirements of 40 CFR Part 75, may comply with the following monitoring requirements:

(1) for stationary gas turbines rated less than 30 megawatt (MW) or peaking gas turbines (as defined in §117.10 of this title (relating to Definitions)) that use steam or water injection to comply with the emission specification of §117.3010(1)(B) of this title:

(A) install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section; or

(B) for units that are not included in a system cap under §117.3020 of this title, install, calibrate, maintain, and operate a continuous monitoring system to monitor and record the average hourly fuel and steam or water consumption. The system must be accurate to within ±5.0%. The steam-to-fuel or water-to-fuel ratio monitoring data must be used for demonstrating continuous compliance with the emission specification of §117.3010(1)(B) of this title; and

(2) for gas turbines not subject to paragraph (1) of this subsection, install, calibrate, maintain, and operate a CEMS or PEMS in compliance with this section.

(h) Totalizing fuel flow meters. The owner or operator of units listed in this subsection shall install, calibrate, maintain, and operate totalizing fuel flow meters to individually and continuously measure the gas and liquid fuel usage. A computer that collects, sums, and stores electronic data from continuous fuel flow meters is an acceptable totalizer. The units are:

(1) any unit subject to the emission specifications of this division;

(2) any stationary gas turbine with an MW rating greater than or equal to 1.0 MW operated more than an average of 10% of the hours of the year, averaged over the three most recent calendar years, or more than 20% of the hours in a single calendar year; and

(3) any unit claimed exempt from the emission specifications of this division using the exemption of §117.3003(1) of this title (relating to Exemptions).

(i) Run time meters. The owner or operator of any stationary gas turbine using the exemption of §117.3003(2) of this title shall record the operating time with an elapsed run time meter approved by the executive director.

(j) Loss of exemption. The owner or operator of any unit claimed exempt from the emission specifications of this division using the exemptions of §117.3003 of this title, shall notify the executive director within seven days if the applicable limit is exceeded.

(1) If the limit is exceeded, the exemption from the emission specifications of §117.3010 of this title is permanently withdrawn.

(2) Within 90 days after loss of the exemption, the owner or operator shall submit a compliance plan detailing a plan to meet the applicable compliance limit as soon as possible, but no later than 24 months after exceeding the limit. The plan must include a schedule of increments of progress for the installation of the required control equipment.

(3) The schedule is subject to the review and approval of the executive director.

(k) Data used for compliance. After the initial demonstration of compliance required by §117.3035 of this title (relating to Initial Demonstration of Compliance) the methods required in this section must be used to determine compliance with the emission specifications of this division. Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

(l) Enforcement of NO_x limits. No unit subject to §117.3010 of this title may be operated at an emission rate higher than that allowed by the emission specifications of §117.3010 of this title.

§117.3045. Notification, Recordkeeping, and Reporting Requirements.

(a) Startup and shutdown records. For units subject to the startup and/or shutdown provisions of §101.222 of this title (relating to Demonstrations), hourly records must be made of startup and/or shutdown events and maintained for a period of at least two years. Records must be available for inspection by the executive director, United States Environmental Protection Agency, and any local air pollution control agency having jurisdiction upon request. These records must include, but are not limited to: type of fuel burned; quantity of each type fuel burned; gross and net energy production in megawatt-hours (MW-hr); and the date, time, and duration of the event.

(b) Notification. The owner or operator of a unit subject to the emission specifications of this division (relating to Utility Electric Generation in East and Central Texas) shall submit notification to the executive director as follows:

(1) verbal notification of the date of any initial demonstration of compliance testing conducted under §117.3035 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation conducted under §117.3040 of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(c) Reporting of test results. The owner or operator of an affected unit shall furnish the executive director and any local air pollution control agency having jurisdiction a copy of any initial demonstration of compliance testing conducted under §117.3035 of this title or any CEMS or PEMS performance evaluation conducted under §117.3040 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance schedule specified in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas).

(d) Annual reports. The owner or operator of a unit required to install a CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system under §117.3040 of this title shall report in writing to the executive director on an annual basis any exceedance of the applicable emission specifications in this division and the monitoring system performance. All reports must be postmarked or received by January 31 following the end of each calendar year. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the unit operating time during the reporting period. For stationary gas turbines using steam-to-fuel or water-to-fuel ratio monitoring to demonstrate compliance in accordance with §117.3040 of this title, excess emissions are computed as each one-hour period that the hourly steam-to-fuel or water-to-fuel ratio is less than the ratio determined to result in compliance during the initial demonstration of compliance test required by §117.3035 of this title;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the continuous monitoring system was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total unit operating time for the reporting period and the CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is less than 5.0% of the total unit operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or steam-to-fuel or water-to-fuel ratio monitoring system downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(e) Recordkeeping. The owner or operator of a unit subject to the requirements of this division shall maintain records of the data specified in this subsection. Records must be kept for a period of at least five years and made available for inspection by the executive director, United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction upon request. Operating records for each unit must be recorded and maintained at a frequency equal to the applicable emission specification averaging period, or for units claimed exempt from the emission specifications based on low annual capacity factor, monthly. Records must include:

(1) emission rates in units of the applicable standards;

(2) gross energy production in MW-hr (not applicable to auxiliary steam boilers);

(3) quantity and type of fuel burned;

(4) the injection rate of reactant chemicals (if applicable); and

(5) emission monitoring data in accordance with §117.3040 of this title, including:

(A) the date, time, and duration of any malfunction in the operation of the monitoring system, except for zero and span checks, if applicable, and a description of system repairs and adjustments undertaken during each period;

(B) the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or operating parameter monitoring systems; and

(C) actual emissions or operating parameter measurements, as applicable;

(6) the results of performance testing, including initial demonstration of compliance testing conducted in accordance with §117.3035 of this title; and

(7) records of hours of operation.

§117.3054. Final Control Plan Procedures.

(a) The owner or operator of units listed in §117.3000 of this title (relating to Applicability) shall submit a final control report to show compliance with the requirements of §117.3010 of this title (relating to Emission Specifications). The report must include:

(1) the section under which nitrogen oxides (NO_x) compliance is being established for the units within the electric generating system, either:

(A) §117.3010 of this title; or

(B) §117.3020 of this title (relating to System Cap);

(2) the methods of NO_x control for each unit;

(3) the emissions measured by testing required in §117.3035 of this title (relating to Initial Demonstration of Compliance);

(4) the submittal date, and whether sent to the Austin or the regional office (or both), of any compliance stack test report or relative accuracy test audit report required by §117.3035 of this title that is not being submitted concurrently with the final compliance report; and

(5) the specific rule citation for any unit with a claimed exemption from the emission specifications of §117.3010 of this title.

(b) In addition to the requirements of subsection (a) of this section, the owner or operator of each source complying with §117.3020 of this title shall submit:

(1) the calculations used to calculate the annual average system cap allowable emission rate;

(2) a list containing, for each unit in the cap:

(A) the average annual heat input H_i specified in §117.3020(c) of this title;

(B) the method of monitoring emissions; and

(C) the method of providing substitute emissions data when the NO_x monitoring system is not providing valid data; and

(3) an explanation of the basis of the value of H_i.

(c) The report must be submitted by the applicable date specified for final control plans in §117.9300 of this title (relating to Compliance Schedule for Utility Electric Generation in East and Central Texas). The plan must be updated with any emission compliance measurements submitted for units using a continuous emissions monitoring system or predictive emissions monitoring system and complying with the system cap annual average emission limit, according to the applicable schedule given in §117.9300 of this title.

§117.3056. Revision of Final Control Plan.

A revised final control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the emission specifications and the final compliance dates of this division (relating to Utility Electric Generation in East and Central Texas). The revision of the final control plan is subject to the review and approval of the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 2. CEMENT KILNS

30 TAC §§117.3100, 117.3101, 117.3103, 117.3110, 117.3120, 117.3123, 117.3125, 117.3140, 117.3142, 117.3145

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.3100. Applicability.

This division (relating to Cement Kilns) applies to each portland cement kiln in Bexar, Comal, Ellis, Hays, and McLennan Counties.

§117.3101. Cement Kiln Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly used in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in this division (relating to Cement Kilns), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 117.10 of this title (relating to Definitions).

(1) Clinker--The product of a portland cement kiln from which finished cement is manufactured by milling and grinding.

(2) Indirect-firing system--A system that reduces the amount of primary air used in a cement kiln by:

(A) separating the powdered fuel from the air stream that carries the fuel from the drying/milling equipment;

(B) storing the fuel briefly; and

(C) using an independent, significantly smaller stream of hot primary air to blow the fuel to the burner.

(3) Long dry kiln--A kiln that employs no preheating of the dry feed. The inlet feed to the kiln is dry.

(4) Long wet kiln--A kiln that employs no preheating of the dry feed. The inlet feed to the kiln is a slurry.

(5) Low-NO_x burner--Either of the following:

(A) for long wet kilns, combustion equipment designed to reduce flame turbulence, delay fuel/air mixing, and establish fuel-rich zones for initial combustion; or

(B) a type of cement kiln burner that results in decreasing nitrogen oxides emissions and that has an indirect-firing system and a series of channels or orifices that:

(i) allow for the adjustment of the volume, velocity, pressure, and direction of the air carrying the fuel (known as primary air) and the combustion air (known as secondary air) into the kiln; and

(ii) impart high momentum and turbulence to the fuel stream to facilitate mixing of the fuel and secondary air.

(6) Low-NO_x precalciner--A process in which a portion of the fuel is injected near the raw material feed end of a preheater or precalciner kiln, resulting in a reducing atmosphere in the preheater or precalciner.

(7) Mid-kiln firing--Secondary combustion in long dry or long wet kilns by injecting solid fuel at (or to) an intermediate point in the kiln using a specially-designed feed injection mechanism for the purpose of decreasing nitrogen oxides emissions through:

(A) burning part of the fuel at a lower temperature; and

(B) reducing conditions at the solid fuel injection point that may destroy some of the nitrogen oxides formed upstream in the kiln burning zone.

(8) Portland cement--A hydraulic cement produced by pulverizing clinker consisting essentially of hydraulic calcium silicates, usually containing one or more of the forms of calcium sulfate as an interground addition.

(9) Portland cement kiln--A system, including any solid, gaseous, or liquid fuel combustion equipment, used to calcine and fuse raw materials, including limestone and clay, to produce portland cement clinker.

(10) Precalciner kiln--A kiln where the feed to the kiln system is preheated in cyclone chambers and utilizes a second burner to calcine material in a separate vessel attached to the preheater before the final fusion in a kiln that forms clinker.

(11) Preheater kiln--A kiln where the feed to the kiln system is preheated in cyclone chambers before the final fusion in a kiln that forms clinker.

(12) Secondary combustion--A system that employs a second combustion point in addition to the primary flame. This definition includes mid-kiln firing in long dry and long wet kilns, and also additional combustion at the raw material feed end of the kiln in preheater-precalciner kilns.

§117.3103. Exemptions.

(a) Portland cement kilns exempted from the provisions of this division (relating to Cement Kilns), include any portland cement kiln placed into service on or after December 31, 1999, except as specified in §§117.3110, 117.3120, and 117.3123 of this title (relating to Emission Specifications; Source Cap; and Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements).

(b) Any account in Ellis County with no portland cement kilns in operation prior to January 1, 2001, is exempt from §117.3123 of this title.

(c) Section 117.3110 and §117.3120 of this title no longer apply to portland cement kilns that are subject to §117.3123 of this title after the compliance date specified in §117.9320(c) of this title (relating to Compliance Schedule for Cement Kilns).

§117.3110. Emission Specifications.

(a) In accordance with the compliance schedule in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns), the owner or operator of each portland cement kiln shall ensure that nitrogen oxides (NO_x) emissions do not exceed the following rates on a 30-day rolling average. For the purposes of this section, the 30-day rolling average is calculated as the total of all the hourly emissions data (in pounds) that fuel was combusted in a cement kiln in the preceding 30 consecutive days, divided by the total number of tons of clinker produced in that kiln during the same 30-day period:

(1) for each long wet kiln:

(A) in Bexar, Comal, Hays, and McLennan Counties, 6.0 pounds per ton (lb/ton) of clinker produced; and

(B) in Ellis County, 4.0 lb/ton of clinker produced;

(2) for each long dry kiln, 5.1 lb/ton of clinker produced;

(3) for each preheater kiln, 3.8 lb/ton of clinker produced; and

(4) for each preheater-precalciner or precalciner kiln, 2.8 lb/ton of clinker produced.

(b) If there are multiple cement kilns at the same account, the owner or operator may choose to comply with the emission specifications of subsection (a) of this section on the basis of a weighted average for the cement kilns at the account that are subject to the same specification. Each owner or operator choosing this option shall submit written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title.

(c) Each long wet or long dry kiln for which the following controls are installed and operated during kiln operation is not required to meet the NO_x emission specifications of subsection (a) of this section, provided that each owner or operator choosing this option submits written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title:

(1) a low-NO_x burner and either:

(A) mid-kiln firing; or

(B) some other form of secondary combustion achieving equivalent levels of NO_x reductions; or alternatively;

(2) other additions or changes to the kiln system achieving at least a 30% reduction in NO_x emissions, provided the additions or changes are approved by the executive director with concurrence from the United States Environmental Protection Agency.

(d) Each preheater or precalciner kiln for which either a low-NO_x burner or a low-NO_x precalciner is installed and operated during kiln operation is not required to meet the NO_x emission specifications of subsection (a) of this section. Each owner or operator choosing this option shall submit written notification of this choice to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction before the appropriate compliance date in §117.9320 of this title.

(e) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_x emission control requirements of this section, in whole or in part.

§117.3120. Source Cap.

(a) As an alternative to complying with the requirements of §117.3110 of this title (relating to Emission Specifications) in Bexar, Comal, Ellis, Hays, and McLennan Counties, an owner or operator may reduce total nitrogen oxides (NO_x) emissions (in pounds per day (ppd)) from all cement kilns at the account (including any cement kilns placed into service on or after December 31, 1999) to at least 30% less than the total NO_x emissions (in ppd) from all cement kilns in the account's 1996 emissions inventory (EI), on a 90-day rolling average basis. For the purposes of this section, the 90-day rolling average is calculated as the total of all the hourly emissions data for the preceding 90 days. For the calendar year that includes the appropriate compliance date in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns), only hourly emissions data on or after that compliance date is included, such that the first 90-day period ends 90 days after the appropriate compliance date in §117.9320 of this title. A 90-day rolling average emission cap must be calculated using the following equation. Figure: 30 TAC §117.3120(a)

(b) To qualify for the source cap option available under this section, the owner or operator shall submit an initial control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction that demonstrates that the overall reduction of NO_x emissions from all cement kilns at the account will be at least 30% from the 1996 baseline EI on a 90-day rolling average basis. The plan must be submitted no later than December 31 of the year preceding the appropriate compliance date in §117.9320 of this title. Each control plan must be approved by the executive director before the owner or operator may use the source cap available under this section for compliance. At a minimum, the control plan must include the emission point number (EPN), facility identification number (FIN), and 1996 baseline EI NO_x emissions (in ppd) from each cement kiln at the account; a description of the control measures that have been or will be implemented at each cement kiln; and an explanation of the recordkeeping procedure and calculations that will be used to demonstrate compliance.

(c) Beginning on March 31 of the year following the appropriate compliance date in §117.9320 of this title, the owner or operator shall submit an annual report no later than March 31 of each year to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction that demonstrates that the overall reduction of NO_x emissions from all cement kilns at the account is at least 30% from the 1996 baseline EI on a 90-day rolling average basis. At a minimum, the report must include the EPN, FIN, and each

90-day rolling average NO_x emissions (in ppd) during the preceding calendar year for the cement kilns at the account.

(d) All representations in control plans and annual reports become enforceable conditions. The owner or operator shall not vary from such representations if the variation will cause a change in the identity of the specific cement kilns subject to this section or the method of control of emissions unless the owner or operator submits a revised control plan to the executive director, the appropriate regional office, and any local air pollution control program with jurisdiction no later than 30 days after the change. All control plans and reports must demonstrate that the total NO_x emissions (in ppd) from all cement kilns at the account (including any cement kilns placed into service on or after December 31, 1999) are being reduced to at least 30% less than the total NO_x emissions (in ppd) from all cement kilns in the account's 1996 EI on a 90-day rolling average basis.

(e) The NO_x emissions monitoring required by §117.3140 of this title (relating to Continuous Demonstration of Compliance) for each cement kiln in the source cap must be used to demonstrate continuous compliance with the source cap.

(f) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_x emission control requirements of this section, in whole or in part.

§117.3123. Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements.

(a) In accordance with the compliance schedule in §117.9320(c) of this title (relating to Compliance Schedule for Cement Kilns), the owner or operator of any portland cement kiln located in Ellis County shall not allow the total nitrogen oxides (NO_x) emissions from all cement kilns located at the account to exceed the source cap limitation determined according to subsection (b) of this section.

(b) The NO_x source cap for an account subject to this section must be calculated according to the following equation.
Figure: 30 TAC §117.3123(b)

(c) The monitoring required by §117.3142 of this title (relating to Emission Testing and Monitoring for Eight-Hour Attainment Demonstration) for each cement kiln subject to this section must be used to demonstrate continuous compliance with the source cap requirements of this section. Compliance with the source cap must be demonstrated on a rolling 30-day average basis, calculated according to §117.3142 of this title.

(d) For any portland cement kiln not operational prior to calendar year 2001 and that is located at an account subject to this section, the following requirements apply.

(1) The cement kiln is subject to the source cap of this section but must not be included in the source cap calculation in subsection (b) of this section.

(2) The requirements of §117.3142 of this title and §117.3145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) apply.

(3) The NO_x emissions from the kiln must be included in the calculation of rolling 30-day average NO_x emissions according to §117.3142 of this title for compliance with the source cap in subsection (b) of this section.

(e) The owner or operator of each portland cement kiln located in Ellis County shall submit a control plan to the Office of Compliance and Enforcement, the appropriate regional office, and the Chief Engineer's Office, for compliance with the source cap in subsection (b) of this section. The plan must be submitted according to the compliance schedule in §117.9320(c) of this title.

(1) At a minimum, the control plan must include:

(A) the emission point number for each kiln at the account;

(B) the facility identification number for each kiln at the account;

(C) the source cap for the account calculated according to the equation in subsection (b) of this section; and

(D) a description of the control measures that have been or will be implemented for each cement kiln for compliance with the source cap.

(2) A revised control plan may be submitted by the owner or operator, along with any required permit applications. Such a plan must adhere to the requirements of this division (relating to Cement Kilns).

(f) For any kiln that injects urea or ammonia for NO_x control, the owner or operator shall not allow ammonia emissions in excess of 10 parts per million by volume at 7.0% oxygen, dry basis, on a rolling 24-hour average basis.

(g) An owner or operator may use §117.9800 of this title (relating to Use of Emission Credits for Compliance) to meet the NO_x emission control requirements of this section, in whole or in part.

§117.3125. Alternative Case Specific Specifications.

(a) Where an owner or operator can demonstrate that an affected portland cement kiln cannot attain the ammonia emission specification in §117.3123(f) of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements), the executive director may approve an emission specification different from §117.3123(f) of this title for that unit. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual portland cement kiln;

(2) shall determine that such specifications are the result of the lowest ammonia emission specification the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission source cap of §117.3123 of this title; and

(3) in determining whether to approve alternative ammonia emission specifications, may take into consideration the ability of the plant where the unit is located to meet emission specifications through plant-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Cement Kilns).

§117.3140. Continuous Demonstration of Compliance.

(a) Nitrogen oxides (NO_x) monitors. In accordance with the compliance schedule in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns), the owner or operator shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) to monitor kiln exhaust NO_x.

(b) CEMS requirements. The owner or operator of any CEMS used to meet the monitoring requirement of subsection (a) of this section shall comply with the following.

(1) The CEMS must meet the requirements of 40 Code of Federal Regulations Part 60 as follows:

(A) §60.13;

(B) Appendix B, Performance Specification 2, for NO_x; and

(C) audits in accordance with Section 5.1 of Appendix F, quality assurance procedures, except that a cylinder gas audit or relative accuracy audit may be performed in lieu of the annual relative accuracy test audit (RATA) required in Section 5.1.1.

(2) One CEMS may be shared among kilns, provided:

(A) the exhaust stream of each kiln is analyzed separately; and

(B) the CEMS meets the certification requirements of paragraph (1) of this subsection for each exhaust stream.

(3) The CEMS is subject to the approval of the executive director.

(c) PEMS requirements. The owner or operator of any PEMS used to meet the monitoring requirement of subsection (a) of this section shall comply with the following.

(1) The PEMS must predict the NO_x emissions in the units of the applicable emission limitations of this division (relating to Cement Kilns).

(2) The PEMS must meet the requirements of §117.8100(b) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

§117.3142. Emission Testing and Monitoring for Eight-Hour Attainment Demonstration.

(a) An owner or operator of any portland cement kiln that is subject to the source cap of §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements) shall comply with the following monitoring requirements.

(1) The nitrogen oxides (NO_x) monitoring requirements of §117.3140 of this title (relating to Continuous Demonstration of Compliance) apply. The following requirements also apply.

(A) For a single portland cement kiln with multiple exhaust stacks, each individual stack must be analyzed separately.

(B) One continuous emission monitoring system (CEMS) may be shared among portland cement kilns or among multiple exhaust stacks on a single portland cement kiln, provided:

(i) the exhaust stream of each stack is analyzed and reported separately; and

(ii) the CEMS meets the certification requirements of §117.3140(b) of this title for each exhaust stream while the CEMS is operating in the time-shared mode.

(C) All bypass stacks must be monitored continuously, in order to quantify emissions directed through the bypass stack. If the CEMS is located upstream of the bypass stack then:

(i) no effluent streams from other potential sources of NO_x emissions may be introduced between the CEMS and the bypass stack; and

(ii) the owner or operator shall install, operate, and maintain a continuous monitoring system to record automatically the date, time, and duration of each event when the bypass stack is open.

(2) Stack exhaust flow rate must be monitored with a flow meter using the monitoring specifications of 40 Code of Federal Regulations (CFR) Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(3) For portland cement kilns that inject ammonia or urea for NO_x control, ammonia emissions must be monitored according to one of the methods specified in §117.8130(1), (2), or (4) of this title (relating to Ammonia Monitoring) to demonstrate compliance with the ammonia emission specification in §117.3123(f) of this title.

(4) Installation of monitors must be performed in accordance with the schedule specified in §117.9320(c) of this title (relating to Compliance Schedule for Cement Kilns).

(b) The owner or operator of a portland cement kiln subject to the source cap requirements of §117.3123 of this title shall calculate NO_x emissions for determining compliance with the source cap as follows.

(1) Hourly NO_x emissions. Hourly NO_x emissions for each kiln must be calculated according to the following equation.
Figure: 30 TAC §117.3142(b)(1)

(2) Daily NO_x emissions. The daily total NO_x emission for each kiln must be calculated as the sum of the 24 hourly NO_x emissions for each calendar day, reported in tons per day, and must be calculated according to the following equation.
Figure: 30 TAC §117.3142(b)(2)

(3) Rolling 30-day average. The rolling 30-day average NO_x emissions for the account must be calculated according to the following equation.
Figure: 30 TAC §117.3142(b)(3)

§117.3145. Notification, Recordkeeping, and Reporting Requirements.

(a) Notification. The owner or operator of each portland cement kiln shall submit verbal notification to the executive director of the date of any continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation conducted under §117.3140 or §117.3142 of this title (relating to Continuous Demonstration of Compliance; and Emission Testing and Monitoring for Eight-Hour Attainment Demonstration) at least 15 days before such date followed by written notification within 15 days after testing is completed.

(b) Reporting of test results. The owner or operator of each portland cement kiln shall furnish the executive director and any local air pollution control agency having jurisdiction a copy of any CEMS or PEMS relative accuracy test audit conducted under §117.3140 or §117.3142 of this title:

(1) within 60 days after completion of such testing or evaluation; and

(2) not later than the appropriate compliance date in §117.9320 of this title (relating to Compliance Schedule for Cement Kilns).

(c) Recordkeeping. The owner or operator of a portland cement kiln subject to the requirements of this division (relating to Cement Kilns) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, United States Environmental

Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each kiln subject to §117.3110 or §117.3120 of this title (relating to Emission Specifications; and Source Cap), monitoring records of:

(A) daily and rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, rolling 90-day average) nitrogen oxides (NO_x) emissions (in pounds);

(B) daily and rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, rolling 90-day average) production of clinker (in United States short tons); and

(C) average NO_x emission rate (in pounds per ton (lb/ton) of clinker produced) on the basis of a rolling 30-day average (and, for each kiln subject to the source cap in §117.3120 of this title, a rolling 90-day average);

(2) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS and PEMS;

(3) records of the results of any stack testing conducted; and

(4) for each kiln subject to the source cap in §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements) and emission testing and monitoring requirements in §117.3142 of this title:

(A) records of the control plan required under §117.3123 of this title;

(B) hourly records of the average NO_x concentration in parts per million by volume, dry basis, at 7% oxygen (O_2);

(C) hourly records of the NO_x emissions in pounds per hour;

(D) daily records of the NO_x emissions in tons per day;

(E) daily records of the NO_x emissions in tons per day expressed as a rolling 30-day average;

(F) hourly records of the average exhaust gas flow rate in dry standard cubic feet per minute, corrected to 7% O_2; and

(G) records of ammonia monitoring required under §117.3142(a)(3) of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606726
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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DIVISION 3. WATER HEATERS, SMALL BOILERS, AND PROCESS HEATERS

30 TAC §§117.3200, 117.3201, 117.3203, 117.3205, 117.3210, 117.3215

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. The new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et. seq.,* that require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state. In addition, the new sections are proposed to implement the legislative mandate under House Bill (HB) 965, 79th Legislature, 2005, which adds Texas Health and Safety Code, §382.0275, concerning Commission Action Relating to Residential Water Heaters, which requires certain actions of the commission regarding residential water heaters.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, and 382.0275.

§117.3200. Applicability.

This division (relating to Water Heaters, Small Boilers, and Process Heaters) applies to manufacturers, distributors, retailers, and installers of natural gas-fired water heaters, boilers, and process heaters with a maximum rated capacity of 2.0 million British thermal units per hour or less.

§117.3201. Definitions.

Unless specifically defined in Texas Health and Safety Code, Chapter 382 (also known as the Texas Clean Air Act) or in the rules of the commission, the terms used by the commission have the meanings commonly used in the field of air pollution control. In addition to the terms that are defined by Texas Health and Safety Code, Chapter 382, the following terms, when used in this division (relating to Water Heaters, Small Boilers, and Process Heaters), have the following meanings, unless the context clearly indicates otherwise. Additional definitions for terms used in this division are found in §§3.2, 101.1, and 117.10 of this title (relating to Definitions).

(1) Heat output--The product H_o obtained when a Type 0, 1, or 2 unit is tested according to Section 9.3 of the South Coast Air Quality Management District Protocol: Nitrogen Oxides Emissions Compliance Testing for Natural Gas-Fired Water Heaters and Small Boilers (January 1998).

(2) Type 0 unit--Any water heater, boiler, or process heater with a maximum rated capacity of no more than 75,000 British thermal units per hour.

(3) Type 1 unit--Any water heater, boiler, or process heater with a maximum rated capacity greater than 75,000, but no more than 400,000 British thermal units per hour.

(4) Type 2 unit--Any water heater, boiler, or process heater with a maximum rated capacity greater than 400,000 British thermal units per hour, but no more than 2.0 million British thermal units per hour.

(5) Water heater--A closed vessel in which water is heated by combustion of gaseous fuel and is withdrawn for use external to the vessel at pressures not exceeding 160 pounds per square inch gauge, including the apparatus by which the heat is generated and all controls and devices necessary to prevent water temperatures from exceeding 210 degrees Fahrenheit.

§117.3203. Exemptions.

This division (relating to Water Heaters, Small Boilers, and Process Heaters) does not apply to:

(1) units using a fuel other than natural gas;

(2) units used in recreational vehicles;

(3) Type 0 units, or Type 1 or 2 units at single-family residences, used exclusively to heat swimming pools and hot tubs;

(4) units manufactured in Texas for shipment and use outside of Texas; and

(5) units that do not comply with the nitrogen oxides specifications in §117.3205 of this title (relating to Emission Specifications) that are sold, supplied, or offered for sale in Texas, provided that the manufacturer or distributor can demonstrate that the units are intended for shipment and use outside of Texas, and that the manufacturer or distributor has taken reasonable, prudent precautions to assure that the units are not distributed for sale in Texas. This paragraph does not apply to units that are sold, supplied, or offered for sale by any person to retail outlets in Texas.

§117.3205. Emission Specifications.

(a) Natural gas-fired boilers and process heaters sold, distributed, installed, or offered for sale within the State of Texas must meet the following specifications for nitrogen oxides (NO_x).

(1) Type 0 units manufactured on or after July 1, 2002, but no later than December 31, 2004, must not exceed:

(A) 40 nanograms per joule (ng/J) of heat output; or

(B) 55 parts per million by volume (ppmv) at 3.0% oxygen (O_2), dry.

(2) Type 0 units manufactured on or after January 1, 2005, must not exceed:

(A) 10 ng/J of heat output; or

(B) 15 ppmv at 3.0% O_2, dry.

(3) Type 1 units manufactured on or after July 1, 2002, must not exceed:

(A) 40 ng/J of heat output; or

(B) 55 ppmv at 3.0% O_2, dry.

(4) Type 2 units manufactured on or after July 1, 2002, must not exceed:

(A) 30 ppmv at 3.0% O_2, dry; or

(B) 0.037 pounds per million British thermal units (lb/MMBtu) of heat input.

(b) Natural gas-fired water heaters sold, distributed, installed, or offered for sale within the State of Texas must meet the following specifications for NO_x.

(1) Type 0 units manufactured on or after July 1, 2002, must not exceed:

(A) 40 ng/J of heat output; or

(B) 55 ppmv at 3.0% O_2, dry.

(2) Type 1 units manufactured on or after July 1, 2002, must not exceed:

(A) 40 ng/J of heat output; or

(B) 55 ppmv at 3.0% O_2, dry.

(3) Type 2 units manufactured on or after July 1, 2002, must not exceed:

(A) 30 ppmv at 3.0% O_2, dry; or

(B) 0.037 lb/MMBtu of heat input.

§117.3210. Certification Requirements.

(a) The manufacturer shall demonstrate that each model of Type 0, 1, and 2 unit subject to the requirements of §117.3205 of this title (relating to Emission Specifications) has been tested in accordance with Test Method 7 (40 Code of Federal Regulations Part 60, Appendix A), including 7A-E, and the South Coast Air Quality Management District (SCAQMD) Protocol: Nitrogen Oxides Emissions Compliance Testing for Natural Gas-Fired Water Heaters and Small Boilers (January 1998).

(b) The manufacturer may submit to the executive director an approved Bay Area Air Quality Management District or SCAQMD certification in lieu of conducting duplicative certification tests.

§117.3215. Notification and Labeling Requirements.

(a) Each manufacturer shall submit to the executive director a statement certifying that Type 0, 1, and 2 units subject to the requirements of §117.3205 of this title (relating to Emission Specifications) are in compliance with §117.3205 of this title. The statement must be signed and dated and attest to the accuracy of all information. The statement must include the manufacturer's brand name, model number, and the input rating as it appears on the rating plate. The manufacturer shall inform their wholesaler and/or retailer of the certification requirement of this subsection.

(b) The manufacturer shall display the model number and date of manufacture of each Type 0, 1, and 2 unit complying with §117.3205 of this title on the shipping carton and rating plate of each Type 0, 1, and 2 unit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 4. EAST TEXAS COMBUSTION

30 TAC §§117.3300, 117.3303, 117.3310, 117.3325, 117.3330, 117.3335, 117.3345

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.3300. Applicability.

This division (relating to East Texas Combustion) applies to stationary, gas-fired reciprocating internal combustion engines at any stationary source of nitrogen oxides in the following affected counties: Anderson, Bosque, Brazos, Burleson, Camp, Cass, Cherokee, Cooke, Freestone, Franklin, Grayson, Gregg, Grimes, Harrison, Henderson, Hill, Hood, Hopkins, Hunt, Lee, Leon, Limestone, Madison, Marion, Morris, Nacogdoches, Navarro, Panola, Rains, Robertson, Rusk, Shelby, Smith, Somervell, Titus, Upshur, Van Zandt, Wise, and Wood Counties.

§117.3303. Exemptions.

The following stationary engines are exempt from this division (relating to East Texas Combustion), except as specified in §117.3345(b) of this title (relating to Recordkeeping and Reporting Requirements):

(1) engines with a maximum rated horsepower (hp) capacity of less than 50 hp;

(2) engines used in research and testing;

(3) engines used for purposes of performance verification and testing;

(4) engines used solely to power other engines or gas turbines during startups;

(5) engines operated exclusively in emergency situations, except that operation for testing or maintenance purposes is allowed for up to 52 hours per year, based on a rolling 12-month average;

(6) engines used in response to and during the existence of any officially declared disaster or state of emergency;

(7) engines used directly and exclusively by the owner or operator for agricultural operations necessary for the growing of crops or raising of fowl or animals;

(8) diesel engines; and

(9) dual-fuel engines.

§117.3310. Emission Specifications for Eight-Hour Attainment Demonstration.

(a) The owner or operator of any stationary, gas-fired reciprocating internal combustion engine subject to this division (relating to East Texas Combustion) shall not allow the discharge into the atmosphere emissions of nitrogen oxides (NO_x) in excess of the following emission specifications:

(1) gas-fired rich-burn engines with a maximum rated capacity less than 500 horsepower (hp), 1.00 grams per horsepower-hour (g/hp-hr);

(2) gas-fired rich-burn engines with a maximum rated capacity equal to or greater than 500 hp:

(A) fired on landfill gas, 0.60 g/hp-hr; and

(B) all other rich-burn engines, 0.50 g/hp-hr; and

(3) gas-fired lean-burn engines:

(A) 2.00 g/hp-hr for any engine placed into service before June 1, 2007, that has not been modified, reconstructed, or relocated on or after June 1, 2007. For the purposes of this subparagraph, the terms "modification" and "reconstruction" have the meanings defined in §116.10 of this title (relating to General Definitions) and 40 Code of Federal Regulations §60.15 (December 16, 1975), respectively, and the term "relocated" means to newly install at an account, as defined in §101.1 of this title (relating to Definitions), a used engine from anywhere outside that account; and

(B) 1.50 g/hp-hr for any engine installed, modified, reconstructed, or relocated on or after June 1, 2007.

(b) The averaging time for determining compliance with the emission specifications in subsection (a) of this section must be a block one-hour average, in the units of the applicable standard.

(c) The maximum rated capacity used to determine the applicability of the emission specifications of subsection (a) of this section or the exemption status of an engine under §117.3303(1) of this title (relating to Exemptions) must be the greater of the following:

(1) the maximum rated capacity as of December 31, 2000; or

(2) the maximum rated capacity after December 31, 2000.

(d) An engine's classification is determined by the most specific classification applicable to the unit as of December 31, 2000. For example, an engine that is classified as a stationary gas-fired engine as of December 31, 2000, but subsequently is authorized to operate as a dual-fuel engine, must be classified as a stationary gas-fired engine for the purposes of this chapter.

(e) The owner or operator of any engine subject to the NO_x emission specifications of subsection (a) of this section, shall not allow the discharge into the atmosphere emissions in excess of the following, except as provided in §117.3325 of this title (relating to Alternative Case Specific Specifications):

(1) carbon monoxide (CO) emissions of 400 parts per million by volume (ppmv), at 3.0% oxygen (O_2), dry basis, or alternatively, 3.0 g/hp-hr, based on:

(A) a rolling 24-hour averaging period, for engines equipped with continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) for CO; or

(B) a one-hour average, for engines not equipped with CEMS or PEMS for CO; and

(2) for units that inject urea or ammonia into the exhaust stream for NO_x control, ammonia emissions of 10 ppmv at 15% O_2, dry, for gas-fired lean-burn engines, and 10 ppmv at 3.0% O_2, dry, for all other engines, based on:

(A) a block one-hour averaging period for units not equipped with a CEMS or PEMS for ammonia; or

(B) a rolling 24-hour averaging period for units equipped with CEMS or PEMS for ammonia.

(f) An owner or operator may use emission reduction credits as specified in §117.9800 of this title (relating to Use of Emission Credits for Compliance) to comply with the NO_x emission specifications of this section.

§117.3325. Alternative Case Specific Specifications.

(a) Where a person can demonstrate that an affected engine cannot attain the carbon monoxide (CO) or ammonia specifications of §117.3310(e) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration), the executive director may approve emission specifications different from the CO or ammonia specifications in §117.3310(e) of this title for that engine. The executive director:

(1) shall consider on a case-by-case basis the technological and economic circumstances of the individual engine;

(2) shall determine that such specifications are the result of the lowest emission limitation the engine is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.3310 of this title; and

(3) in determining whether to approve alternative emission specifications, may take into consideration the ability of the plant where the engine is located to meet emission specifications through system-wide averaging at maximum capacity.

(b) Any owner or operator affected by the executive director's decision to deny an alternative case specific emission specification may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply.

§117.3330. Operating Requirements.

(a) The owner or operator shall operate any stationary, reciprocating combustion engine subject to §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) in compliance with the emission specifications of §117.3310 of this title.

(b) Each stationary, reciprocating combustion engine subject to §117.3310 of this title must be operated so as to minimize nitrogen oxides (NO_x) emissions, consistent with the emission control techniques selected, over the engine's operating or load range during normal operations. Such operational requirements include the following.

(1) Each engine controlled with post-combustion control techniques must be operated such that the reducing agent injection rate is maintained to limit NO_x concentrations to less than or equal to the NO_x concentrations achieved at maximum rated capacity.

(2) Each engine controlled with nonselective catalytic reduction must be equipped with an automatic air-fuel ratio (AFR) controller that operates on exhaust oxygen or carbon monoxide control basis and maintains the AFR in the range required to meet the engine's applicable emission specifications.

(3) Each engine must be checked for proper operation according to §117.8140(b) of this title (relating to Emission Monitoring for Engines).

§117.3335. Monitoring, Notification, and Testing Requirements.

(a) Oxygen (O_2) monitors. If the owner or operator installs a continuous emissions monitoring system (CEMS) to monitor O_2, the CEMS must meet the requirements of §117.8100(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(b) Nitrogen oxides (NO_x) monitors. If the owner or operator installs a CEMS or predictive emissions monitoring system (PEMS) to monitor NO_x, the CEMS or PEMS must meet the requirements of §117.8100(a) or (b) of this title, as applicable.

(c) Monitor installation schedule. If the owner or operator elects to installs CEMS or PEMS to monitor NO_x or O_2 as provided in subsections (a) and (b) of this section, installation and certification of monitoring systems must be performed in accordance with the schedule specified in §117.9340 of this title (relating to Compliance Schedule for East Texas Combustion).

(d) Testing requirements. The owner or operator of any stationary, reciprocating combustion engine subject to §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the following testing requirements.

(1) Each engine must be tested for NO_x, carbon monoxide (CO), and O_2 emissions.

(2) Each engine that injects urea or ammonia into the exhaust stream for NO_x control must be tested for ammonia emissions.

(3) For engines not equipped with CEMS or PEMS, all testing must be conducted according to §117.8000 of this title (relating to Stack Testing Requirements). In lieu of the test methods specified in §117.8000 of this title, the owner or operator may use American Society for Testing and Materials (ASTM) D6522-00 to perform the NO_x, CO, and O_2 testing required by this subsection on natural gas-fired reciprocating internal combustion engines. If the owner or operator elects to use ASTM D6522-00 for the testing requirements, the report must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

(4) Test results must be reported in the units of the applicable emission specifications and averaging periods.

(5) For engines equipped with CEMS or PEMS, the CEMS or PEMS must be installed and operational before conducting testing under this subsection. Verification of operational status must, at a minimum, include completion of the initial monitor certification and the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device.

(6) For engines operating with CEMS or PEMS, initial compliance with the emission specifications of §117.3310 of this title may be demonstrated by using the CEMS or PEMS, after monitor certification testing, in lieu of the methods specified in §117.3335(d)(3) of this title (relating to Monitoring, Notification, and Testing Requirements).

(7) For engines not operating with CEMS or PEMS, periodic testing for NO_x and CO emissions must be conducted according to §117.8140(a) of this title (relating to Emission Monitoring for Engines).

(A) Retesting as specified in paragraphs (1) - (4) of this subsection is required within 60 days after any modification that could reasonably be expected to increase the NO_x emission rate.

(B) Retesting as specified in paragraphs (1) - (4) of this subsection may be conducted at the discretion of the owner or operator after any modification that could reasonably be expected to decrease the NO_x emission rate, including, but not limited to, installation of post-combustion controls or low-NO_x burners, low excess air operation, staged combustion (for example, overfire air), flue gas recirculation, and fuel-lean and conventional (fuel-rich) reburn.

(8) Testing must be performed in accordance with the schedule specified in §117.9340 of this title.

(e) Ammonia monitoring. Each stationary, reciprocating combustion engine that injects urea or ammonia into the exhaust stream for NO_x control must be monitored according to one of the ammonia monitoring procedures specified in §117.8130 of this title (relating to Ammonia Monitoring).

(f) Notification. The owner or operator of an affected stationary, reciprocating combustion engine must submit written notification of any CEMS or PEMS relative accuracy test audit (RATA) or testing required under this section, except for testing related to ammonia monitoring specified in subsection (e) of this section, to the appropriate regional office and any local air pollution control agency having jurisdiction at least 15 days in advance of the date of RATA or testing.

§117.3345. Recordkeeping and Reporting Requirements.

(a) Recordkeeping. The owner or operator of a stationary, reciprocating combustion engine subject to §117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall maintain written or electronic records of the data specified in this subsection. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction. The records must include:

(1) for each engine using a continuous emissions monitoring system (CEMS) or predictive emissions monitoring systems (PEMS) in accordance with §117.3335(a) or (b) of this title (relating to Monitoring, Notification, and Testing Requirements), monitoring records of hourly emissions for engines complying with an emission specification enforced on a block one-hour average;

(2) for each engine subject to §117.3310 of this title, records of:

(A) emissions measurements required by §117.3330(b)(3) of this title (relating to Operating Requirements); and

(B) catalytic converter, air-fuel ratio controller, or other emissions-related control system maintenance, including the date and nature of corrective actions taken;

(3) records of carbon monoxide measurements required by §117.3330(b)(3) of this title;

(4) records of the results of initial certification testing, evaluations, calibrations, checks, adjustments, and maintenance of CEMS, PEMS, or steam-to-fuel or water-to-fuel ratio monitoring systems;

(5) records of the results of performance testing, including the testing conducted in accordance with §117.3335(d) of this title; and

(6) records of the ammonia monitoring required by §117.3335(e) of this title, if applicable.

(b) Records for exempt engines. Written records of the number of hours of operation for each day's operation must be made for each engine claimed exempt under §117.3303(5) of this title (relating to Exemptions) or §117.3330(b)(3) of this title. In addition, for each engine claimed exempt under §117.3303(5) of this title, written records must be maintained that document the purpose of the engine operation, and if operation was for an emergency situation, identify the type of emergency situation and the start and end times and date(s) of the emergency situation. The records must be maintained for at least five years and must be made available upon request to representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

(c) Reporting. Except for the ammonia monitoring requirements of §117.3335(e) of this title, the owner or operator of an affected stationary, reciprocating combustion engine shall furnish the appropriate regional office and the Office of Compliance and Enforcement reports of all testing and monitor certifications required under §117.3335 of this title. Reports must be submitted for review and approval within 60 days after completion of the testing and must contain the information specified in §117.8010 of this title (relating to Compliance Stack Test Reports).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. ACID MANUFACTURING
DIVISION 1. ADIPIC ACID MANUFACTURING

30 TAC §§117.4000, 117.4005, 117.4025, 117.4035, 117.4040, 117.4045, 117.4050

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.4000. Applicability.

The provisions of this division (relating to Adipic Acid Manufacturing) apply only in the Beaumont-Port Arthur and Houston-Galveston-Brazoria ozone nonattainment areas. These provisions apply to each adipic acid production unit that is the affected facility.

§117.4005. Emission Specifications.

No person may allow emissions of nitrogen oxides, calculated as nitrogen dioxide, from the absorber of any adipic acid production unit to exceed 2.5 pounds per ton of adipic acid produced, on a 24-hour rolling average.

§117.4025. Alternative Case Specific Specifications.

Where a person can demonstrate that an affected unit cannot attain the requirements of §117.4005 of this title (relating to Emission Specifications), as applicable, the executive director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.4005 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.4005 of this title. Any owner or operator affected by the decision of the executive director may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Adipic Acid Manufacturing).

§117.4035. Initial Demonstration of Compliance.

(a) Compliance with the nitrogen oxides emission specifications in §117.4005 of this title (relating to Emission Specifications) must be determined by the performance testing procedures specified in 40 Code of Federal Regulations (CFR) Part 60, Appendix A, Method 7, or an equivalent method approved by the executive director. Method 7A, 7B, 7C, or 7D may be used in place of Method 7. If Method 7C or 7D is used, the sampling time must be at least one hour.

(b) Performance testing must be conducted in accordance with the procedures specified in 40 CFR §60.8.

(c) Any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.4040 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational prior to conducting performance testing under subsections (a) and (b) of this section. Verification of operational status must, at a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Testing conducted before June 23, 1994, may be used to demonstrate compliance with the standard specified in §117.4005 of this title if the owner or operator of an affected facility demonstrates to the executive director that the prior performance testing at least meets the requirements of subsections (a) - (c) of this section. The executive director reserves the right to request performance testing or CEMS or PEMS performance evaluation at any time.

§117.4040. Continuous Demonstration of Compliance.

(a) The owner or operator of any facility subject to the provisions of this division (relating to Adipic Acid Manufacturing) shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring nitrogen oxides (NO_x) from the absorber.

(b) Any CEMS installed subject to subsection (a) of this section must meet all requirements of 40 Code of Federal Regulations (CFR) §60.13; 40 CFR Part 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR Part 60, Appendix F, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1.

(c) As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this division may, with the approval of the executive director, elect to install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS). The required PEMS must be used to measure NO_x emissions for each affected unit and must be used to demonstrate continuous compliance with the emission specifications of §117.4005 of this title (relating to Emission Specifications). Any PEMS must meet the requirements of §117.4045 and §117.8100(b) of this title (relating to Notification, Recordkeeping, and Reporting Requirements; and Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(d) The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the NO_x emission standard (in pounds per ton of acid produced) as specified in 40 CFR §60.73(b). NO_x emissions data recorded by the CEMS or PEMS must be represented in terms of both parts per million by volume and pounds per ton of acid produced.

(e) After the initial demonstration of compliance required by §117.4035 of this title (relating to Initial Demonstration of Compliance), compliance with §117.4005 of this title must be determined by the methods required in this section. Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

§117.4045. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit notification to the executive director, as follows:

(1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation conducted under §117.4040(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any initial demonstration of compliance testing conducted under §117.4035 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the executive director and any local air pollution control agency having jurisdiction a copy of any CEMS or PEMS performance evaluation conducted under §117.4040 of this title, or any initial demonstration of compliance testing conducted under §117.4035 of this title, within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.9500 of this title (relating to Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources), such results must be submitted no later than 30 days before the final compliance date specified in §117.9500 of this title.

(c) The owner or operator of an affected facility shall report in writing to the executive director on a quarterly basis all periods of excess emissions, defined as any 24-hour period that the average nitrogen oxides emissions (arithmetic average of 24 contiguous one-hour periods) exceed the emission specification in §117.4005 of this title (relating to Emission Specifications) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar quarter. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the CEMS or PEMS was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or local air pollution control agencies having jurisdiction.

§117.4050. Control Plan Procedures.

Any person affected by this division (relating to Adipic Acid Manufacturing) shall submit a control plan to the executive director on the compliance status of all required emission controls and monitoring systems by April 1, 1994. The executive director shall approve the plan if it contains all the information specified in this section. Revisions to the control plan must be submitted to the executive director for approval. The control plan must provide a detailed description of the method to be followed to achieve compliance, specifying the anticipated dates that the following steps will be taken:

(1) dates that contracts for emission control and monitoring systems will be awarded or dates that orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(2) date of initiation of on-site construction or installation of emission control equipment or process modification;

(3) date that on-site construction or installation of emission control equipment or process modification is to be completed; and

(4) date that final compliance is to be achieved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. NITRIC ACID MANUFACTURING--OZONE NONATTAINMENT AREAS

30 TAC §§117.4100, 117.4105, 117.4125, 117.4135, 117.4140, 117.4145, 117.4150

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the

commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.*, which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.4100. Applicability.

The provisions of this division (relating to Nitric Acid Manufacturing--Ozone Nonattainment Areas) apply only in the Beaumont-Port Arthur and Houston-Galveston-Brazoria ozone nonattainment areas. These provisions apply to each nitric acid production unit that is the affected facility.

§117.4105. Emission Specifications.

No person may allow emissions of nitrogen oxides, calculated as nitrogen dioxide, from the absorber of any nitric acid production unit to exceed 2.0 pounds per ton of nitric acid produced, the production being expressed as 100% nitric acid, on a 24-hour rolling average.

§117.4125. Alternative Case Specific Specifications.

Where a person can demonstrate that an affected unit cannot attain the requirements of §117.4105 of this title (relating to Emission Specifications), as applicable, the executive director, on a case-by-case basis after considering the technological and economic circumstances of the individual unit, may approve emission specifications different from §117.4105 of this title for that unit based on the determination that such specifications are the result of the lowest emission limitation the unit is capable of meeting after the application of controls to meet the nitrogen oxides emission specifications of §117.4105 of this title. Any owner or operator affected by the decision of the executive director may file a motion to overturn the executive director's decision. The requirements of §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) apply. Executive director approval does not necessarily constitute satisfaction of all federal requirements nor eliminate the need for approval by the United States Environmental Protection Agency in cases where specified criteria for determining equivalency have not been clearly identified in applicable sections of this division (relating to Nitric Acid Manufacturing--Ozone Nonattainment Areas).

§117.4135. Initial Demonstration of Compliance.

(a) Compliance with the nitrogen oxides emission specifications in §117.4105 of this title (relating to Emission Specifications) must be determined by the performance testing procedures specified in 40 Code of Federal Regulations (CFR) Part 60, Appendix A, Method 7, or an equivalent method approved by the executive director. Method 7A, 7B, 7C, or 7D may be used in place of Method 7. If Method 7C or 7D is used, the sampling time must be at least one hour.

(b) Performance testing must be conducted in accordance with the procedures specified in 40 CFR §60.8.

(c) Any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) required by §117.4140 of this title (relating to Continuous Demonstration of Compliance) must be installed and operational prior to conducting performance testing under subsections (a) and (b) of this section. Verification of operational status must, at a minimum, include completion of the manufacturer's written requirements or recommendations for installation, operation, and calibration of the device or system.

(d) Testing conducted before June 23, 1994, may be used to demonstrate compliance with the standard specified in §117.4105 of this title if the owner or operator of an affected facility demonstrates to the executive director that the prior performance testing, at a minimum, meets the requirements of subsections (a) - (c) of this section. The executive director reserves the right to request performance testing or CEMS or PEMS performance evaluation at any time.

§117.4140. Continuous Demonstration of Compliance.

(a) The owner or operator of any facility subject to the provisions of this division (relating to Nitric Acid Manufacturing--Ozone Nonattainment Areas) shall install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring nitrogen oxides (NO_x) from the absorber.

(b) Any CEMS installed subject to subsection (a) of this section must meet all requirements of 40 Code of Federal Regulations (CFR) §60.13; 40 CFR Part 60, Appendix B, Performance Specification 2; and quality assurance procedures of 40 CFR Part 60, Appendix F, except that a cylinder gas audit may be performed in lieu of the annual relative accuracy test audit required in Section 5.1.1.

(c) As an alternative to CEMS, the owner or operator of units subject to continuous monitoring requirements under this division may, with the approval of the executive director, elect to install, calibrate, maintain, and operate a predictive emissions monitoring system (PEMS). The required PEMS must be used to measure NO_x emissions for each affected unit and must be used to demonstrate continuous compliance with the emission limitations of §117.4105 of this title (relating to Emission Specifications). Any PEMS must meet the requirements of §117.4145 and §117.8100(b) of this title (relating to Notification, Recordkeeping, and Reporting Requirements; and Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

(d) The owner or operator of an affected facility shall establish a conversion factor for the purpose of converting monitoring data into units of the NO_x emission standard (in pounds per ton of acid produced, expressed as 100% nitric acid) as specified in 40 CFR §60.73(b). NO_x emissions data recorded by the CEMS or PEMS must be represented in terms of both parts per million by volume and pounds per ton of acid produced, expressed as 100% nitric acid.

(e) After the initial demonstration of compliance required by §117.4135 of this title (relating to Initial Demonstration of Compli-

ance), compliance with §117.4105 of this title must be determined by the methods required in this section. Compliance with the emission specifications may also be determined at the discretion of the executive director using any commission compliance method.

§117.4145. Notification, Recordkeeping, and Reporting Requirements.

(a) The owner or operator of an affected facility shall submit notification to the executive director, as follows:

(1) verbal notification of the date of any continuous emissions monitoring systems (CEMS) or predictive emissions monitoring systems (PEMS) performance evaluation conducted under §117.4140(b) of this title (relating to Continuous Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed; and

(2) verbal notification of the date of any initial demonstration of compliance testing conducted under §117.4135 of this title (relating to Initial Demonstration of Compliance) at least 15 days prior to such date followed by written notification within 15 days after testing is completed.

(b) The owner or operator of an affected facility shall furnish the executive director and any local air pollution control agency having jurisdiction a copy of any CEMS or PEMS performance evaluation conducted under §117.4140 of this title, or any initial demonstration of compliance testing conducted under §117.4135 of this title, within 60 days after completion of such evaluation or testing. For purposes of demonstrating compliance with §117.9500 of this title (relating to Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources), such results must be submitted no later than 30 days before the final compliance date specified in §117.9500 of this title.

(c) The owner or operator of an affected facility shall report in writing to the executive director on a quarterly basis all periods of excess emissions, defined as any 24-hour period that the average nitrogen oxides emissions (arithmetic average of 24 contiguous one-hour periods), as measured by a CEMS or PEMS, exceed the emission specification in §117.4105 of this title (relating to Emission Specifications) and the monitoring system performance. All reports must be postmarked or received by the 30th day following the end of each calendar quarter. Written reports must include the following information:

(1) the magnitude of excess emissions computed in accordance with 40 Code of Federal Regulations §60.13(h), any conversion factors used, the date and time of commencement and completion of each time period of excess emissions, and the process operating time during the reporting period;

(2) specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the affected unit. The nature and cause of any malfunction (if known) and the corrective action taken or preventative measures adopted;

(3) the date and time identifying each period that the CEMS or PEMS was inoperative, except for zero and span checks and the nature of the system repairs or adjustments;

(4) when no excess emissions have occurred or the continuous monitoring system has not been inoperative, repaired, or adjusted, such information must be stated in the report; and

(5) if the total duration of excess emissions for the reporting period is less than 1.0% of the total operating time for the reporting period and the CEMS or PEMS downtime for the reporting period is less than 5.0% of the total operating time for the reporting period, only a summary report form (as outlined in the latest edition of the commission's *Guidance for Preparation of Summary, Excess Emission, and Continuous Monitoring System Reports*) must be submitted, unless otherwise requested by the executive director. If the total duration of excess emissions for the reporting period is greater than or equal to 1.0% of the total operating time for the reporting period or the CEMS or PEMS downtime for the reporting period is greater than or equal to 5.0% of the total operating time for the reporting period, a summary report and an excess emission report must both be submitted.

(d) The owner or operator of an affected facility shall maintain written records of all continuous emissions monitoring and performance test results, hours of operation, and daily production rates. Such records must be kept for a period of at least five years and must be made available upon request by authorized representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control agency having jurisdiction.

§117.4150. Control Plan Procedures.

Any person affected by this division (relating to Nitric Acid Manufacturing--Ozone Nonattainment Areas) shall submit a control plan to the executive director on the compliance status of all required emission controls and monitoring systems by April 1, 1994. The executive director shall approve the plan if it contains all the information specified in this section. Revisions to the control plan must be submitted to the executive director for approval. The control plan must provide a detailed description of the method to be followed to achieve compliance, specifying the anticipated dates that the following steps will be taken:

(1) dates that contracts for emission control and monitoring systems will be awarded or dates that orders will be issued for the purchase of component parts to accomplish emission control or process modification;

(2) date of initiation of on-site construction or installation of emission control equipment or process modification;

(3) date that on-site construction or installation of emission control equipment or process modification is to be completed; and

(4) date that final compliance is to be achieved.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. NITRIC ACID MANUFACTURING--GENERAL

30 TAC §§117.4200, 117.4205, 117.4210

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, con-

cerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.4200. Applicability.

The emission specifications in §117.4205 of this title (relating to Emission Specifications) apply to all nitric acid production units in the state, with the exception that, for nitric acid production units located in applicable ozone nonattainment areas, the emission specifications of §117.4105 of this title (relating to Emission Specifications) apply after November 15, 1999.

§117.4205. Emission Specifications.

No person shall allow emissions of nitrogen oxides, calculated as nitrogen dioxide, from any nitric acid production unit to exceed 600 parts per million by volume.

§117.4210. Applicability of Federal New Source Performance Standards.

None of the provisions of this subchapter (relating to Acid Manufacturing) may be construed to limit or preclude applicability of any provision of 40 Code of Federal Regulations Part 60, Subpart G (Standards of Performance for Nitric Acid Plants).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. GENERAL MONITORING AND TESTING REQUIREMENTS
DIVISION 1. COMPLIANCE STACK TESTING AND REPORT REQUIREMENTS

30 TAC §117.8000, §117.8010

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.8000. Stack Testing Requirements.

(a) When required by this chapter, the owner or operator of a unit subject to this chapter shall conduct testing according to the requirements of this section.

(b) The unit must be operated at the maximum rated capacity, or as near as practicable. Compliance must be determined by the average of three one-hour emission test runs. Shorter test times may be used if approved by the executive director.

(c) Testing must be performed using the following test methods:

(1) Test Method 7E or 20 (40 Code of Federal Regulations (CFR), Part 60, Appendix A) for nitrogen oxides (NO_x);

(2) Test Method 10, 10A, or 10B (40 CFR 60, Appendix A) for carbon monoxide (CO);

(3) Test Method 3A or 20 (40 CFR 60, Appendix A) for oxygen (O_2);

(4) for units that inject ammonia or urea to control NO_x emissions, the Phenol-Nitroprusside Method, the Indophenol Method, or the United States Environmental Protection Agency Conditional Test Method 27 for ammonia;

(5) Test Method 2 (40 CFR 60, Appendix A) for exhaust gas flow and following the measurement site criteria of Test Method 1, §11.1 (40 CFR 60, Appendix A), or Test Method 19 (40 CFR 60, Appendix A) for exhaust gas flow in conjunction with the measurement site criteria of Performance Specification 2, §8.1.3 (40 CFR 60, Appendix B); or

(6) American Society for Testing and Materials (ASTM) Method D1945-91 or ASTM Method D3588-93 for fuel composition; ASTM Method D1826-88 or ASTM Method D3588-91 for calorific value; or alternate methods as approved by the executive director and the United States Environmental Protection Agency.

(d) United States Environmental Protection Agency-approved alternate test methods or minor modifications to the test methods specified in subsection (c) of this section may be used, as approved by the executive director, as long as the minor modifications meet the following conditions:

(1) the change does not affect the stringency of the applicable emission specification;

(2) the change affects only a single source or facility application.

§117.8010. Compliance Stack Test Reports.

Compliance stack test reports of testing performed in accordance with §117.8000 of this title (relating to Stack Testing Requirements), or if otherwise specified in this chapter, must include the following minimum contents.

(1) Introductory information. Background information pertinent to the test must include:

(A) company name, address, and name of company official responsible for submitting report;

(B) name and address of testing organization;

(C) names of persons present, dates, and location of test;

(D) schematic drawings of the unit being tested, showing emission points, sampling sites, and stack cross-section with the sampling points labeled and dimensions indicated;

(E) description of the process being sampled; and

(F) facility identification number used to identify the unit in the final control plan.

(2) Summary information. Summary information must include:

(A) a summary of emission rates found, reported in the units of the applicable emission limits and averaging periods, and compared with the applicable emission specification;

(B) the maximum rated capacity, normal maximum capacity, and actual operating level of the unit during the test (in million British thermal units, horsepower, or megawatts, as applicable), and description of the method used to determine such operating level;

(C) the operating parameters of any active nitrogen oxides (NO_x) control equipment during the test (for example, percent flue gas recirculation, ammonia flow rate, etc); and

(D) documentation that no changes to the unit have occurred since the compliance test was conducted that could result in a significant change in NO_x emissions.

(3) Procedure. The description of the procedures used and description of the operation of the sampling train and process during the test must include:

(A) a schematic drawing of the sampling devices used with each component designated and explained in a legend;

(B) a brief description of the method used to operate the sampling train and the procedure used to recover samples; and

(C) deviation from reference methods, if any.

(4) Analytical technique. A brief description of all analytical techniques used to determine the emissions from the source must be provided.

(5) Data and calculations. All data and calculations must be provided, including:

(A) field data collected on raw data sheets;

(B) log of process operating levels, including fuel data;

(C) laboratory data, including blanks, tare weights, and results of analysis; and

(D) emission calculations.

(6) Chain of custody. A listing of the chain of custody of the emission or fuel test samples, as applicable, must be provided.

(7) Appendix. The appendices must include:

(A) calibration work sheets for sampling equipment;

(B) collection of process logs of process parameters;

(C) brief resume/qualifications of test personnel; and

(D) description of applicable continuous monitoring system, as applicable.

(8) Monitor certification reports. Monitor certification reports must contain:

(A) information that demonstrates compliance with the certification requirements of §117.8100(a) or (b) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources) for any continuous emissions monitoring system or predictive emissions monitoring system, as applicable; and

(B) the relative accuracy test audit information specified in 40 Code of Federal Regulations Part 60, Appendix B, Performance Specification 2, §8.5.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-5017

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DIVISION 2. EMISSION MONITORING

30 TAC §§117.8100, 117.8110, 117.8120, 117.8130, 117.8140

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.8100. Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources.

(a) Continuous emissions monitoring system (CEMS) requirements. When required by this chapter, the owner or operator of any CEMS shall comply with the following.

(1) Except as specified in paragraph (5) of this subsection, the CEMS must meet the requirements of 40 Code of Federal Regulations (CFR) Part 60 as follows:

(A) §60.13;

(B) Appendix B:

(i) Performance Specification 2, for nitrogen oxides (NO_x) in terms of the applicable standard (in parts per million by volume (ppmv), pounds per million British thermal units (lb/MMBtu), or grams per horsepower-hour (g/hp-hr)). An alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value is allowed;

(ii) Performance Specification 3, for diluent; and

(iii) Performance Specification 4, for carbon monoxide (CO), for owners or operators electing to use a CO CEMS; and

(C) after the final applicable compliance date or date of required submittal of CEMS performance evaluation, conduct audits in accordance with §5.1 of Appendix F, quality assurance procedures for NO_x, CO, and diluent analyzers, except that a cylinder gas audit or relative accuracy audit may be performed in lieu of the annual relative accuracy test audit (RATA) required in §5.1.1. If the optional alternative relative accuracy requirement of subparagraph (B)(i) of this paragraph (or equivalent) from the reference method mean value is used, then an annual RATA must be performed.

(2) The owner or operator shall monitor diluent, either oxygen (O_2) or carbon dioxide (CO_2), unless using an exhaust flow meter that meets the flow monitoring specifications of 40 CFR Part 60, Appendix B, Performance Specification 6 or 40 CFR Part 75, Appendix A.

(3) One CEMS may be shared among units or among multiple exhaust stacks on a single unit, provided:

(A) the exhaust stream of each stack is analyzed separately; and

(B) the CEMS meets the certification requirements of paragraph (1) of this subsection for each stack while the CEMS is operating in the time-shared mode.

(4) Each individual stack must be analyzed separately for units with multiple exhaust stacks.

(5) As an alternative to paragraph (1) of this subsection, an owner or operator may choose to comply with the CEMS requirements of 40 CFR Part 75 as follows:

(A) general operation requirements in Subpart B, §75.10(a)(2);

(B) certification procedures and test methods in Subpart C, §75.20(c) and §75.22;

(C) recordkeeping requirements of the monitoring plan in Subpart D, §75.53(a) - (c);

(D) appropriate specifications and test procedures in Appendix A, as follows:

(i) §1 (Installation and Measurement Location);

(ii) §2 (Equipment Specifications);

(iii) §3 (Performance Specifications);

(iv) §4 (Data Acquisition and Handling Systems);

(v) §5 (Calibration Gas);

(vi) §6 (Certification Tests and Procedures); and

(vii) meet either the relative accuracy requirement of 40 CFR Part 75 in percentage only, or the alternative relatively accuracy requirement of ±2.0 ppmv from the reference method mean value; and

(E) appropriate quality assurance/quality control procedures in Appendix B, as follows:

(i) §1 (Quality Assurance/Quality Control Program); and

(ii) §2 (Frequency of Testing).

(6) The CEMS is subject to the approval of the executive director.

(b) Predictive emissions monitoring system (PEMS) requirements. When required by this chapter, the owner or operator of any PEMS shall comply with the following.

(1) The owner or operator shall monitor diluent, either O_2 or CO_2:

(A) using a CEMS:

(i) in accordance with subsection (a)(1)(B)(ii) of this section; or

(ii) with a similar alternative method approved by the executive director and the United States Environmental Protection Agency; or

(B) using a PEMS.

(2) Any PEMS must meet the requirements of 40 CFR Part 75, Subpart E, except as provided in paragraphs (3) and (4) of this subsection.

(3) The owner or operator may vary from 40 CFR Part 75, Subpart E if the owner or operator:

(A) demonstrates to the satisfaction of the executive director and the United States Environmental Protection Agency that the alternative is substantially equivalent to the requirements of 40 CFR Part 75, Subpart E; or

(B) demonstrates to the satisfaction of the executive director that the requirement is not applicable.

(4) The owner or operator may substitute the following as an alternative to the test procedure of Subpart E for any unit:

(A) perform the following alternative initial certification tests:

(i) conduct initial RATA at low, medium, and high levels of the key operating parameter affecting NO_x using 40 CFR Part 60, Appendix B:

(I) Performance Specification 2, subsection 13.2, pertaining to NO_x, in terms of the applicable standard (in ppmv, lb/MMBtu, or g/hp-hr). An alternative relative accuracy requirement of ±2.0 ppmv from the reference method mean value is allowed;

(II) Performance Specification 3, subsection 13.2, pertaining to O_2 or CO_2; and

(III) Performance Specification 4, subsection 13.2, pertaining to CO, for owners or operators electing to use a CO PEMS; and

(ii) conduct an F-test, a t-test, and a correlation analysis using 40 CFR Part 75, Subpart E at low, medium, and high levels of the key operating parameter affecting NO_x:

(I) calculations must be based on a minimum of 30 successive emission data points at each tested level that are either 15-minute, 20-minute, or hourly averages;

(II) the F-test must be performed separately at each tested level;

(III) the t-test and the correlation analysis must be performed using all data collected at the three tested levels;

(IV) waivers from the statistical tests and default reference method standard deviation values for the F-test may be allowed according to the *TNRCC PEMS Protocol Draft*, May 16, 1994;

(V) the correlation analysis may only be temporarily waived following review of the waiver request submittal if:

(-a-) the process design is such that it is technically impossible to vary the process to result in a concentration change sufficient to allow a successful correlation analysis statistical test. Any waiver request must also be accompanied with documentation of the reference method measured concentration, and documentation that it is less than 50% of the emission limit or standard. The waiver must be based on the measured value at the time of the waiver. Should a subsequent RATA effort identify a change in the reference method measured value by more than 30%, the statistical test must be repeated at the next RATA effort to verify the successful compliance with the correlation analysis statistical test requirement; or

(-b-) the data for a measured compound (e.g., NO_x, O_2) are determined to be autocorrelated according to the procedures of 40 CFR §75.41(b)(2). A complete analysis of autocorrelation with support information must be submitted with the request for waiver. The statistical test must be repeated at the next RATA effort to verify the successful compliance with the correlation analysis statistical test requirement; and

(VI) all requests for waivers must be submitted to the executive director for review. The executive director shall approve or deny each waiver request;

(B) further demonstrate PEMS accuracy and precision for at least one unit of a category of equipment by performing RATA and statistical testing in accordance with subparagraph (A) of this paragraph for each of three successive quarters, beginning:

(i) no sooner than the quarter immediately following initial certification; and

(ii) no later than the first quarter following the final compliance date; and

(C) after the final applicable compliance date, perform RATA for each unit:

(i) at normal load operations;

(ii) using the Performance Specifications of subparagraph (A)(i)(I) - (III) of this paragraph; and

(iii) at the following frequency:

(I) semiannually; or

(II) annually, if following the first semiannual RATA, the relative accuracy during the previous audit for each compound monitored by PEMS is less than or equal to 7.5% (or within ±2.0 ppmv) of the mean value of the reference method test data at normal load operation; or alternatively:

(-a-) for diluent, is no greater than 1.0% O_2 or CO_2, for diluent measured by reference method at less than 5% by volume; or

(-b-) for CO, is no greater than 5.0 ppmv.

(5) The owner or operator shall, for each alternative fuel fired in a unit, certify the PEMS in accordance with paragraph (4)(A) of this subsection unless the alternative fuel effects on NO_x, CO, and O_2 (or CO_2) emissions were addressed in the model training process.

(6) The PEMS is subject to the approval of the executive director.

(c) Monitoring system certification reports. Reports of any RATA performed in accordance with this section must comply with §117.8010 of this title (relating to Compliance Stack Test Reports).

§117.8110. Emission Monitoring System Requirements for Utility Electric Generation Sources.

(a) Continuous emissions monitoring system (CEMS) requirements. When required by this chapter, the owner or operator of any CEMS shall comply with the following.

(1) The CEMS must be installed, calibrated, maintained, and operated in accordance with 40 Code of Federal Regulations (CFR) Part 75 or 40 CFR Part 60, as applicable.

(2) One CEMS may be shared among units, provided:

(A) the exhaust stream of each unit is analyzed separately; and

(B) the CEMS meets the applicable certification requirements of paragraph (1) of this subsection for each exhaust stream.

(b) Predictive emissions monitoring system (PEMS) requirements. When required by this chapter, the owner or operator of any PEMS shall comply with the following.

(1) The owner or operator shall monitor diluent, either oxygen or carbon dioxide:

(A) using a CEMS:

(i) in accordance with subsection (a) of this section; or

(ii) with a similar alternative method approved by the executive director and the United States Environmental Protection Agency; or

(B) using a PEMS.

(2) Any PEMS for units subject to the requirements of 40 CFR Part 75 must meet the requirements of 40 CFR Part 75, Subpart E, §§75.40 - 75.48.

(3) Any PEMS for units not subject to the requirements of 40 CFR Part 75 must meet the requirements of either:

(A) 40 CFR Part 75, Subpart E, §§75.40 - 75.48; or

(B) §117.8100(b) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources).

§117.8120. Carbon Monoxide (CO) Monitoring.

When required by this chapter, the owner or operator shall monitor carbon monoxide (CO) exhaust emissions from an affected unit using one or more of the following methods:

(1) install, calibrate, maintain, and operate a:

(A) continuous emissions monitoring system (CEMS) in accordance with §117.8100(a) or §117.8110(a) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources; and Emission Monitoring System Requirements for Utility Electric Generation Sources), as applicable; or

(B) predictive emissions monitoring system (PEMS) in accordance with §117.8100(b) or §117.8110(b) of this title, as applicable; or

(2) sample CO as follows:

(A) with a portable analyzer (or 40 Code of Federal Regulations (CFR) Part 60, Appendix A reference method test apparatus) after manual combustion tuning or manual burner adjustments conducted for the purpose of minimizing nitrogen oxides (NO_x) emissions whenever, following such manual changes, either of the following occur:

(i) NO_x emissions are sampled with a portable analyzer or 40 CFR Part 60, Appendix A reference method test apparatus; or

(ii) the resulting NO_x emissions measured by CEMS or predicted by PEMS are lower than levels when CO emissions data was previously gathered; and

(B) sample CO emissions using the test methods and procedures of 40 CFR Part 60 in conjunction with any relative accuracy test audit of the NO_x and diluent analyzer.

§117.8130. Ammonia Monitoring.

When required by this chapter, one of the following ammonia monitoring procedures must be used to demonstrate compliance with the applicable ammonia emission specifications of this chapter for gas-fired or liquid-fired units that inject urea or ammonia into the exhaust stream for nitrogen oxides (NO_x) control.

(1) Mass balance. Ammonia emissions are calculated as the difference between the input ammonia, measured by the ammonia injection rate, and the ammonia reacted, measured by the differential NO_x upstream and downstream of the control device that injects urea or ammonia into the exhaust stream. The ammonia emissions must be calculated using the following equation.
Figure: 30 TAC §117.8130(1)

(2) Oxidation of ammonia to nitric oxide (NO). Convert ammonia to NO using a molybdenum oxidizer and measure ammonia slip by difference using a NO analyzer. The NO analyzer must be quality assured in accordance with the manufacturer's specifications and with a quarterly cylinder gas audit with a 10 parts per million by volume (ppmv) reference sample of ammonia passed through the probe and confirming monitor response to within ±2.0 ppmv.

(3) Stain tubes. Measure ammonia using a sorbent or stain tube device specific for ammonia measurement in the 5.0 to 10.0 ppmv range. The frequency of sorbent/stain tube testing must be daily for the first 60 days of operation. After the first 60 days of operation, the frequency may be reduced to weekly testing if operating procedures have been developed to prevent excess amounts of ammonia from being introduced in the control device and when operation of the control device has been proven successful with regard to controlling ammonia slip. Daily sorbent or stain tube testing must resume when the catalyst is within 30 days of its useful life expectancy. Every effort must be made to take at least one weekly sample near the normal highest ammonia injection rate.

(4) Other methods. Monitor ammonia using another continuous emissions monitoring system or predictive emissions monitoring system procedure subject to prior approval of the executive director.

§117.8140. Emission Monitoring for Engines.

(a) Periodic testing. When required by this chapter, the owner or operator of any stationary internal combustion engine shall test engine nitrogen oxides (NO_x) and carbon monoxide (CO) emissions as follows.

(1) The methods specified in §117.8000 of this title (relating to Stack Testing Requirements) must be used.

(2) The owner or operators shall sample:

(A) on a biennial calendar basis; or

(B) within 15,000 hours of engine operation after the previous emission test, under the following conditions:

(i) install and operate an elapsed operating time meter; and

(ii) submit, in writing, to the executive director and any local air pollution agency having jurisdiction, biennially after the initial demonstration of compliance:

(I) documentation of the actual recorded hours of engine operation since the previous emission test; and

(II) an estimate of the date of the next required sampling.

(3) Engines used exclusively in emergency situations are not required to conduct the testing specified in paragraph (2) of this subsection.

(b) Proper operation. When required by this chapter, the owner or operator of any stationary internal combustion engine shall check the engine for proper operation by recorded measurements of engine NO_x and CO emissions at least quarterly and as soon as practicable within two weeks after each occurrence of engine maintenance that may reasonably be expected to increase emissions, oxygen sensor replacement, or catalyst cleaning or catalyst replacement. Stain tube indicators specifically designed to measure NO_x concentrations may be acceptable for this documentation, provided a hot air probe or equivalent device is used to prevent error due to high stack temperature, and three sets of concentration measurements are made and averaged. Portable NO_x analyzers are also acceptable for this documentation. Quarterly emission testing is not required for those engines whose monthly run time does not exceed ten hours. This exemption does not diminish the requirement to test emissions after the installation of controls, major repair work, and any time the owner or operator believes emissions may have changed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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SUBCHAPTER H. ADMINISTRATIVE PROVISIONS

DIVISION 1. COMPLIANCE SCHEDULES

30 TAC §§117.9000, 117.9010, 117.9020, 117.9030, 117.9100, 117.9110, 117.9120, 117.9130, 117.9200, 117.9210, 117.9300, 117.9320, 117.9340, 117.9500

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.9000. Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Major Sources.

The owner or operator of each industrial, commercial, and institutional source in the Beaumont-Port Arthur ozone nonattainment area shall comply with the requirements of Subchapter B, Division 1 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Major Sources) as soon as practicable, but no later than the dates specified in this section.

(1) Reasonably available control technology (RACT). The owner or operator shall for all units, comply with the requirements of Subchapter B, Division 1 of this chapter, except as specified in paragraph (2) of this section (relating to lean-burn engines) and paragraph (3) of this section (relating to emission specifications for attainment demonstration), by November 15, 1999 (final compliance date), and submit to the executive director:

(A) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.135 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(B) for units operating with CEMS or PEMS in accordance with §117.140 of this title (relating to Continuous Demonstration of Compliance), the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating

to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources); and

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.135 of this title;

(iii) no later than:

(I) November 15, 1999, for units complying with the nitrogen oxides (NO_x) emission specification on an hourly average; and

(II) January 15, 2000, for units complying with the NO_x emission specification on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.152 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than November 15, 1999; and

(D) the first semiannual report required by §117.145(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period November 15, 1999, through December 31, 1999, no later than January 31, 2000.

(2) Lean-burn engines. The owner or operator shall for each lean-burn, stationary, reciprocating internal combustion engine subject to §117.105(e) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), comply with the requirements of Subchapter B, Division 1 of this chapter for those engines as soon as practicable, but no later than November 15, 2001 (final compliance date for lean-burn engines); and

(A) no later than November 15, 2001, submit a revised final control plan that contains:

(i) the information specified in §117.152 of this title as it applies to the lean-burn engines; and

(ii) any other revisions to the source's final control plan as a result of complying with the lean-burn engine emission specifications; and

(B) no later than January 31, 2002, submit the first semiannual report required by §117.145(e) of this title covering the period November 15, 2001, through December 31, 2001.

(3) Emission specifications for attainment demonstration. The owner or operator shall comply with the requirements of §117.110(a) of this title (relating to Emission Specifications for Attainment Demonstration) as soon as practicable, but no later than:

(A) May 1, 2003, demonstrate that at least two-thirds of the NO_x emission reductions required by §117.110(a) of this title have been accomplished, as measured either by:

(i) the total number of units required to reduce emissions in order to comply with §117.110(a) of this title using direct compliance with the emission specifications, counting only units still required to reduce after May 11, 2000; or

(ii) the total amount of emissions reductions required to comply with §117.110(a) of this title using the alternative methods to comply, either:

(I) §117.115 of this title (relating to Alternative Plant-Wide Emission Specifications);

(II) §117.123 of this title (relating to Source Cap); or

(III) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(B) May 1, 2003, submit to the executive director:

(i) identification of enforceable emission limits that satisfy the conditions of subparagraph (A) of this paragraph;

(ii) for units operating without CEMS or PEMS or for units operating with CEMS or PEMS and complying with the NO_x emission limit on an hourly average, the results of applicable tests for initial demonstration of compliance as specified in §117.135 of this title;

(iii) for units newly operating with CEMS or PEMS to comply with the monitoring requirements of §117.140(c)(1)(C) of this title or §117.123 of this title, the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title;

(iv) the information specified in §117.154 of this title (relating to Final Control Plans Procedures for Attainment Demonstration Emission Specifications); and

(v) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.110(a) of this title;

(C) July 31, 2003, submit to the executive director:

(i) the applicable tests for the initial demonstration of compliance as specified in §117.135 of this title, for units complying with the NO_x emission specification on a rolling 30-day average; and

(ii) the first semiannual report required by §117.123(e) and §117.145(e) of this title, covering the period May 1, 2003, through June 30, 2003;

(D) May 1, 2005, comply with §117.110(a) of this title;

(E) May 1, 2005, submit a revised final control plan that contains:

(i) a demonstration of compliance with §117.110(a) of this title;

(ii) the information specified in §117.154 of this title; and

(iii) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.110(a) of this title; and

(F) July 31, 2005, submit to the executive director the applicable tests for the initial demonstration of compliance as specified in §117.135 of this title, if using the 30-day average source cap NO_x emission limit to comply with the emission specifications in §117.110(a) of this title.

§117.9010. Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Major Sources.

The owner or operator of each industrial, commercial, and institutional source in the Dallas-Fort Worth ozone nonattainment area shall comply with the requirements of Subchapter B, Division 2 of this chapter (relating to Dallas-Fort Worth Ozone Nonattainment Area Major Sources) as soon as practicable, but no later than March 31, 2002 (final compliance date). The owner or operator shall:

(1) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than March 31, 2002; and

(2) submit to the executive director:

(A) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring sys-

tem (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.235 of this title (relating to Initial Demonstration of Compliance) as early as practicable, but in no case later than March 31, 2002;

(B) for units operating with CEMS or PEMS in accordance with §117.240 of this title (relating to Continuous Demonstration of Compliance), the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources);

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.235 of this title; and

(iii) no later than:

(I) March 31, 2002, for units complying with the NO_x emission specification on an hourly average; and

(II) May 31, 2002, for units complying with the NO_x emission specification on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.252 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than March 31, 2002; and

(D) the first semiannual report required by §117.245(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period March 31, 2002, through June 30, 2002, no later than July 31, 2002.

§117.9020. Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources.

The owner or operator of each industrial, commercial, and institutional source in the Houston-Galveston-Brazoria ozone nonattainment area shall comply with the requirements of Subchapter B, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Major Sources) as soon as practicable, but no later than the dates specified in this section.

(1) Reasonably available control technology. The owner or operator shall, for all units, comply with the requirements of Subchapter B, Division 3 of this chapter, except as specified in paragraph (2) of this section, by November 15, 1999 (final compliance date); and

(A) submit a plan for compliance in accordance with §117.350 of this title (relating to Initial Control Plan Procedures) according to the following schedule:

(i) for major sources of nitrogen oxides (NO_x) that have units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than April 1, 1994;

(ii) for major sources of NO_x that have no units subject to emission specifications under this chapter, submit an initial control plan for all such units no later than September 1, 1994; and

(iii) for major sources of NO_x subject to either clause (i) or (ii) of this subparagraph, submit the information required by §117.350(c)(6), (7), and (9) of this title no later than September 1, 1994;

(B) install all NO_x abatement equipment and implement all NO_x control techniques no later than November 15, 1999; and

(C) submit to the executive director:

(i) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.335 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(ii) for units operating with CEMS or PEMS in accordance with §117.340 of this title (relating to Continuous Demonstration of Compliance), submit the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources); and

(II) the applicable tests for the initial demonstration of compliance as specified in §117.335 of this title;

(III) no later than:

(-a-) November 15, 1999, for units complying with the NO_x emission specification on an hourly average; and

(-b-) January 15, 2000, for units complying with the NO_x emission specification on a rolling 30-day average;

(iii) a final control plan for compliance in accordance with §117.352 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than November 15, 1999; and

(iv) the first semiannual report required by §117.345(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period November 15, 1999, through December 31, 1999, no later than January 31, 2000.

(2) Emission specifications for attainment demonstration.

(A) The owner or operator of any unit subject to §117.310(a) (relating to Emission Specifications for Attainment Demonstration) shall comply with the requirements of §117.340 of this title as follows.

(i) As soon as practicable, but no later than March 31, 2005, the owner or operator shall install any totalizing fuel flow meters, run time meters, and emissions monitors required by §117.340 of this title, except that if flue gas cleanup (for example, controls that use a chemical reagent for reduction of NO_x) is installed on a unit before March 31, 2005, then the emissions monitors required by §117.340 of this title must be installed and operated at the time of startup following the installation of flue gas cleanup on that unit. However, an owner or operator may choose to demonstrate compliance with the ammonia monitoring requirements through annual ammonia stack testing until March 31, 2005.

(I) Within 60 days after startup of a unit following installation of emissions monitors, the owner or operator shall submit to the executive director the results of the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title; or

(II) If the unit is shut down as of March 31, 2005, the CEMS or PEMS performance evaluation and quality assurance procedures must be submitted to the executive director within 60 days after the startup of the unit after March 31, 2005.

(ii) Within 60 days after startup of a unit following installation of emissions controls, the owner or operator shall submit to the executive director the results of:

(I) stack tests conducted in accordance with §117.335 of this title. For a stack test conducted before March 31,

2005, on a unit not equipped with CEMS or PEMS that CEMS or PEMS must be installed no later than March 31, 2005, the requirements of §117.335(c) of this title do not apply; or, as applicable,

(II) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title.

(B) The owner or operator of each electric generating facility (EGF) shall:

(i) no later than June 30, 2001, submit to the executive director the certification of level of activity, H_x, specified in §117.320 of this title (relating to System Cap) for each EGF in operation as of January 1, 1997;

(ii) no later than 60 days after the end of the first five years of operation, submit to the executive director the certification of activity level, H_x, based on any two consecutive third quarters of actual level of activity data available from the first five years of operation as specified in §117.320 of this title for each EGF not in operation prior to January 1, 1997; and

(iii) comply with the requirements of §117.320 of this title as soon as practicable, but no later than March 31, 2007.

(C) For any units subject to §117.310(a) of this title that stack testing or the CEMS or PEMS performance evaluation and quality assurance has not been conducted under subparagraph (A) of this paragraph or units placed into service after March 31, 2005, that do not have flue gas cleanup, the owner or operator shall submit to the executive director as soon as practicable, but no later than March 31, 2007, the results of:

(i) stack tests conducted in accordance with §117.335 of this title; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title.

(D) The owner or operator shall comply with the emission reduction requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) as soon as practicable, but no later than the appropriate dates specified in that program.

(E) For diesel and dual-fuel engines, the owner or operator shall comply with the restriction on hours of operation for maintenance or testing, and associated recordkeeping, as soon as practicable, but no later than April 1, 2002.

(F) The owner or operator shall comply with all other requirements of Subchapter B, Division 3 of this chapter as soon as practicable, but no later than March 31, 2005.

(G) The owner or operator of a unit that is subject to §117.310(a) of this title and will be permanently shut down on or before September 30, 2005, may elect to comply with §117.340(a) and (c) - (f) of this title by performing testing in lieu of the monitoring requirements, provided that following conditions are met:

(i) submit written notification to the executive director no later than March 31, 2005, containing the following:

(I) a list of units, by emission point number, that the owner or operator will permanently shut down on or before September 30, 2005;

(II) the projected date(s) that each unit will be permanently shut down; and

(III) the projected date(s) of the testing to be performed in accordance with clause (ii) of this subparagraph;

(ii) the testing is performed in accordance with §117.335 of this title after March 31, 2005, and prior to September 30, 2005, while operating at maximum rated capacity, or as near thereto as practicable. For the time period from March 31, 2005, to September 30, 2005, the results of this testing must be used for demonstrating compliance with the emission specifications in §117.310(a) of this title or to quantify the emissions for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title;

(iii) for units that a totalizing fuel flow meter has not been installed as required in §117.340(a) of this title, the maximum rated capacity of the unit must be used to quantify the emissions for units subject to the mass emissions cap and trade program of Chapter 101, Subchapter H, Division 3 of this title; and

(iv) if the unit is not shut down by September 30, 2005, the owner or operator will be considered in violation of this section as of March 31, 2005, and extensions beyond September 30, 2005, will not be granted.

§117.9030. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources.

(a) Increment of progress emission specifications. The owner or operator of any stationary, reciprocating internal combustion engine subject to §117.410(a) of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration) shall comply with the requirements of §117.410(a) of this title as soon as practicable, but no later than June 15, 2007 (the final compliance date). The owner or operator shall:

(1) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than June 15, 2007; and

(2) submit to the executive director:

(A) for units operating without a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS), the results of applicable tests for initial demonstration of compliance as specified in §117.435 of this title (relating to Initial Demonstration of Compliance) as early as practicable, but in no case later than June 15, 2007;

(B) for units operating with a CEMS or PEMS in accordance with §117.440 of this title (relating to Continuous Demonstration of Compliance), the results of:

(i) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources);

(ii) the applicable tests for the initial demonstration of compliance as specified in §117.435 of this title; and

(iii) no later than:

(I) June 15, 2007, for units complying with the NO_x emission limit on an hourly average; and

(II) June 15, 2007, for units complying with the NO_x emission limit on a rolling 30-day average;

(C) a final control plan for compliance in accordance with §117.454 of this title (relating to Final Control Plan Procedures

for Attainment Demonstration Emission Specifications), no later than January 1, 2008; and

(D) the first semiannual report required by §117.445(d) or (e) of this title (relating to Notification, Recordkeeping, and Reporting Requirements), covering the period June 15, 2007, through December 31, 2007, no later than January 31, 2008.

(b) Eight-hour ozone attainment demonstration emission specifications.

(1) The owner or operator of any stationary source of NO_x in the Dallas-Fort Worth eight-hour ozone nonattainment area that is a major source of NO_x and is subject to §117.410(b) of this title shall comply with the requirements of Subchapter B, Division 4 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources) as follows:

(A) submit the initial control plan required by §117.450 of this title (relating to Initial Control Plan Procedures) no later than June 1, 2008; and

(B) comply with all other requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than March 1, 2009.

(2) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter B, Division 4 of this chapter on or after March 1, 2009, shall comply with the requirements of Subchapter B, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

§117.9100. Compliance Schedule for Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources.

The owner or operator of each electric utility in the Beaumont-Port Arthur ozone nonattainment area shall comply with the requirements of Subchapter C, Division 1 of this chapter (relating to Beaumont-Port Arthur Ozone Nonattainment Area Utility Electric Generation Sources) as soon as practicable, but no later than the dates specified in this section.

(1) Reasonably available control technology (RACT). The owner or operator shall for all units, comply with the requirements of Subchapter C, Division 1 of this chapter as soon as practicable, but no later than November 15, 1999 (final compliance date), except as specified in subparagraph (D) of this paragraph, relating to oil firing, and paragraph (2) of this section, relating to emission specifications for attainment demonstration:

(A) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) evaluations and quality assurance procedures as specified in §117.1040 of this title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(i) for equipment and software required under 40 Code of Federal Regulations (CFR) Part 75, no later than January 1, 1995, for units firing coal, and no later than July 1, 1995, for units firing natural gas or oil; and

(ii) for equipment and software not required under 40 CFR Part 75, no later than November 15, 1999;

(B) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than November 15, 1999;

(C) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.1035 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(ii) for units operating with CEMS or PEMS in accordance with §117.1040 of this title, the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.1040 of this title; and

(II) the applicable tests for the initial demonstration of compliance as specified in §117.1035 of this title;

(III) no later than:

(-a-) November 15, 1999, for units complying with the NO_x emission specification on an hourly average; and

(-b-) January 15, 2000, for units complying with the NO_x emission specification on a rolling 30-day average;

(D) conduct applicable tests for initial demonstration of compliance with the NO_x emission specification for fuel oil firing, in accordance with §117.1035(d)(2) of this title, and submit test results within 60 days after completion of such testing; and

(E) submit a final control plan for compliance in accordance with §117.1052 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than November 15, 1999.

(2) Emission specifications for attainment demonstration. The owner or operator shall comply with the requirements of §117.1010(a) of this title (relating to Emission Specifications for Attainment Demonstration) as soon as practicable, but no later than:

(A) May 1, 2003, demonstrate that at least two-thirds of the NO_x emission reductions required by §117.1010(a) of this title have been accomplished, as measured either by:

(i) the total number of units required to reduce emissions in order to comply with §117.1010(a) of this title using direct compliance with the emission specifications, counting only units still required to reduce after May 11, 2000; or

(ii) the total amount of emissions reductions required to comply with §117.1010(a) of this title using the alternative methods to comply, either:

(I) §117.1020 of this title (relating to System Cap); or

(II) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(B) May 1, 2003, submit to the executive director:

(i) identification of enforceable emission limits that satisfy subparagraph (A) of this paragraph;

(ii) the information specified in §117.1054 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications) to comply with subparagraph (A) of this paragraph; and

(iii) any other revisions to the source's final control plan as a result of complying with subparagraph (A) of this paragraph;

(C) May 1, 2003, install CEMS or PEMS on previously exempt units and conduct applicable CEMS or PEMS evaluations and quality assurance procedures as specified in §117.1040 of this title;

(D) July 31, 2003, submit to the executive director the applicable tests for the initial demonstration of compliance as specified

in §117.1035 of this title, if using the 30-day average system cap to comply with subparagraph (A) of this paragraph;

(E) May 1, 2005, comply with §117.1010(a) of this title;

(F) May 1, 2005, submit a revised final control plan that contains:

(i) a demonstration of compliance with §117.1010(a) of this title;

(ii) the information specified in §117.1054 of this title; and

(iii) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.1010(a) of this title; and

(G) July 31, 2005, submit to the executive director the applicable tests for the initial demonstration of compliance as specified in §117.1035 of this title, if using the 30-day average system cap NO_x emission limit to comply with the emission specifications in §117.1010(a) of this title.

§117.9110. Compliance Schedule for Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources.

The owner or operator of each electric utility in the Dallas-Fort Worth ozone nonattainment area shall comply with the requirements of Subchapter C, Division 2 of this chapter (relating to Dallas-Fort Worth Ozone Nonattainment Area Utility Electric Generation Sources) as soon as practicable, but no later than the dates specified in this section.

(1) Reasonably available control technology (RACT). The owner or operator shall comply with the requirements of Subchapter C, Division 2 of this chapter as soon as practicable, but no later than March 31, 2001 (final compliance date), except as provided in subparagraph (D) of this paragraph, relating to oil firing, and paragraph (2) of this section, relating to emission specifications for attainment demonstration:

(A) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) evaluations and quality assurance procedures as specified in §117.1140 of this title (relating to Continuous Demonstration of Compliance) no later than March 31, 2001;

(B) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than March 31, 2001;

(C) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.1135 of this title (relating to Initial Demonstration of Compliance) no later than March 31, 2001;

(ii) for units operating with CEMS or PEMS in accordance with §117.1140 of this title, the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.1140 of this title; and

(II) the applicable tests for the initial demonstration of compliance as specified in §117.1135 of this title;

(III) no later than:

(-a-) March 31, 2001, for units complying with the NO_x emission specification in pounds per hour on a block one-hour average; and

(-b-) May 31, 2001, for units complying with the NO_x emission specification on a rolling 30-day average;

(D) conduct applicable tests for initial demonstration of compliance with the NO_x emission specification for fuel oil firing, in accordance with §117.1135(d)(2) of this title, and submit test results within 60 days after completion of such testing; and

(E) submit a final control plan for compliance in accordance with §117.1152 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than March 31, 2001.

(2) Emission specifications for attainment demonstration.

(A) The owner or operator shall comply with the requirements of §117.1110(a) of this title (relating to Emission Specifications for Attainment Demonstration) as soon as practicable, but no later than:

(i) May 1, 2003, demonstrate that at least two-thirds of the NO_x emission reductions required by §117.1110(a) of this title have been accomplished, as measured either by:

(I) the total number of units required to reduce emissions in order to comply with §117.1110(a) of this title using direct compliance with the emission specifications, counting only units still required to reduce after May 11, 2000; or

(II) the total amount of emissions reductions required to comply with §117.1110(a) of this title using the alternative methods to comply, either:

(-a-) §117.1120 of this title (relating to System Cap); or

(-b-) §117.9800 of this title (relating to Use of Emission Credits for Compliance);

(ii) May 1, 2003, submit to the executive director:

(I) identification of enforceable emission limits that satisfy clause (i) of this subparagraph;

(II) the information specified in §117.1154 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications) to comply with clause (i) of this subparagraph; and

(III) any other revisions to the source's final control plan as a result of complying with clause (i) of this subparagraph;

(iii) May 1, 2003, install CEMS or PEMS on previously exempt units and conduct applicable CEMS or PEMS evaluations and quality assurance procedures as specified in §117.1140 of this title;

(iv) July 31, 2003, submit to the executive director the applicable tests for the initial demonstration of compliance as specified in §117.1135 of this title, if using the 30-day average system cap to comply with clause (i) of this subparagraph;

(v) May 1, 2005, comply with §117.1110(a) of this title;

(vi) May 1, 2005, submit a revised final control plan that contains:

(I) a demonstration of compliance with §117.1110(a) of this title;

(II) the information specified in §117.1154 of this title; and

(III) any other revisions to the source's final control plan as a result of complying with the emission specifications in §117.1110(a) of this title; and

(vii) July 31, 2005, submit to the executive director the applicable tests for the initial demonstration of compliance as specified in §117.1135 of this title, if using the 30-day average system cap NO_x emission limit to comply with the emission specifications in §117.1110(a) of this title.

(B) The requirements of subparagraph (A)(i) of this paragraph may be modified as follows. Boilers that are to be retired and decommissioned before May 1, 2005, are not required to install controls by May 1, 2003, if the following conditions are met:

(i) the boiler is designated by the Public Utility Commission of Texas to be necessary to operate for reliability of the electric system;

(ii) the owner provides the executive director an enforceable written commitment by May 1, 2003, to retire and permanently decommission the boiler by May 1, 2005;

(iii) the utility boiler is retired and permanently decommissioned by May 1, 2005; and

(iv) by May 1, 2003, all remaining boilers (those not designated for retirement and decommissioning as specified in clauses (i) - (iii) of this subparagraph) within the electric utility system are controlled to achieve at least two-thirds of the NO_x emission reductions from units not being retired and decommissioned.

§117.9120. Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources.

The owner or operator of each electric utility in the Houston-Galveston-Brazoria ozone nonattainment area shall comply with the requirements of Subchapter C, Division 3 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Utility Electric Generation Sources) as soon as practicable, but no later than the dates specified in this section.

(1) Reasonably available control technology. The owner or operator shall, for all units, comply with the requirements of Subchapter C, Division 3 of this chapter as soon as practicable, but no later than November 15, 1999 (final compliance date), except as specified in subparagraph (D) of this paragraph, relating to oil firing, and paragraph (2) of this section:

(A) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) evaluations and quality assurance procedures as specified in §117.1240 of this title (relating to Continuous Demonstration of Compliance) according to the following schedules:

(i) for equipment and software required under 40 Code of Federal Regulations (CFR) Part 75, no later than January 1, 1995, for units firing coal, and no later than July 1, 1995, for units firing natural gas or oil; and

(ii) for equipment and software not required under 40 CFR Part 75, no later than November 15, 1999;

(B) install all nitrogen oxides (NO_x) abatement equipment and implement all NO_x control techniques no later than November 15, 1999;

(C) submit to the executive director:

(i) for units operating without CEMS or PEMS, the results of applicable tests for initial demonstration of compliance as specified in §117.1235 of this title (relating to Initial Demonstration of Compliance); by April 1, 1994, or as early as practicable, but in no case later than November 15, 1999;

(ii) for units operating with CEMS or PEMS in accordance with §117.1240 of this title, the results of:

(I) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.1240 of this title; and

(II) the applicable tests for the initial demonstration of compliance as specified in §117.1235 of this title;

(III) no later than:

(-a-) November 15, 1999, for units complying with the NO_x emission specification on an hourly average; and

(-b-) January 15, 2000, for units complying with the NO_x emission specification on a rolling 30-day average;

(D) conduct applicable tests for initial demonstration of compliance with the NO_x emission specification for fuel oil firing, in accordance with §117.1235(d)(2) of this title, and submit test results within 60 days after completion of such testing; and

(E) submit a final control plan for compliance in accordance with §117.1252 of this title (relating to Final Control Plan Procedures for Reasonably Available Control Technology), no later than November 15, 1999.

(2) Emission specifications for attainment demonstration.

(A) The owner or operator of a unit subject to §117.1210(a) of this title (relating to Emission Specifications for Attainment Demonstration) shall comply with the requirements of §117.1240 of this title as soon as practicable, but no later than:

(i) March 31, 2005, install any totalizing fuel flow meters and emissions monitors required by §117.1240 of this title, except that if flue gas cleanup (for example, controls that use a chemical reagent for reduction of NO_x) is installed on a unit before March 31, 2005, then the emissions monitors required by §117.1240 of this title must be installed and operated at the time of startup following the installation of flue gas cleanup on that unit. However, an owner or operator may choose to demonstrate compliance with the ammonia monitoring requirements through annual ammonia stack testing until March 31, 2005; and

(ii) 60 days after startup of a unit following installation of emissions controls, submit to the executive director the results of:

(I) stack tests conducted in accordance with §117.1235 of this title; or, as applicable,

(II) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.1240 of this title.

(B) The owner or operator shall:

(i) no later than June 30, 2001, submit to the executive director the certification of level of activity, H_i, specified in §117.1220 of this title (relating to System Cap) for electric generating facilities (EGFs) in operation as of January 1, 1997;

(ii) no later than 60 days after the second consecutive third quarter of actual level of activity level data are available, submit to the executive director the certification of activity level, H_i, specified in §117.1220 of this title for EGFs not in operation prior to January 1, 1997; and

(iii) comply with the requirements of §117.1220 of this title as soon as practicable, but no later than:

(I) March 31, 2003, demonstrate that at least 50% of the NO_x emission reductions have been accomplished, as measured by the difference between the highest 30-day average emissions measured in the 1997 - 1999 period and the system cap limit of §117.1220 of this title; and

(II) March 31, 2004, submit the information specified in §117.1254 of this title (relating to Final Control Plan Procedures for Attainment Demonstration Emission Specifications);

(III) March 31, 2004, demonstrate compliance with the system cap limit of §117.1220 of this title.

(C) For any unit subject to §117.1210(a) of this title that stack testing or a CEMS or PEMS performance evaluation and quality assurance has not been conducted under subparagraph (A)(ii) of this paragraph, the owner or operator shall submit to the executive director as soon as practicable, but no later than March 31, 2007, the results of:

(i) stack tests conducted in accordance with §117.1235 of this title; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.1240 of this title.

(D) The owner or operator shall comply with the emission reduction requirements of Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) as soon as practicable, but no later than the appropriate dates specified in that program.

§117.9130. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources.

(a) The owner or operator of each electric utility in the Dallas-Fort Worth eight-hour ozone nonattainment area shall comply with the requirements of Subchapter C, Division 4 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources) as soon as practicable, but no later than as follows:

(1) submit the initial control plan required by §117.1350 of this title (relating to Initial Control Plan Procedures) no later than June 1, 2008; and

(2) comply with all other requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than March 1, 2009.

(b) The owner or operator of any unit in the Dallas-Fort Worth eight-hour ozone nonattainment area of nitrogen oxides that becomes subject to the requirements of Subchapter C, Division 4 of this chapter on or after March 1, 2009, shall comply with the requirements of Subchapter C, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

§117.9200. Compliance Schedule for Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources.

The owner or operator of each stationary source of nitrogen oxides (NO_x) in the Houston-Galveston-Brazoria ozone nonattainment area that is not a major source of NO_x shall comply with the requirements of Subchapter D, Division 1 of this chapter (relating to Houston-Galveston-Brazoria Ozone Nonattainment Area Minor Sources) as follows.

(1) For sources subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program), the owner or operator shall:

(A) install any totalizing fuel flow meters and run time meters required by §117.2035 of this title (relating to Monitoring and Testing Requirements) and begin keeping records of fuel usage as required by §117.2045 of this title (relating to Recordkeeping and Reporting Requirements) no later than March 31, 2005, except that if flue gas cleanup (for example, controls that use a chemical reagent for reduction of NO_x) is installed on a unit before March 31, 2005, then the emissions monitors required by §117.2035 of this title must be installed and operated at the time of startup following the installation of flue gas cleanup on that unit. However, an owner or operator may choose to demonstrate compliance with the ammonia monitoring requirements through annual ammonia stack testing until March 31, 2005;

(B) no later than 60 days after startup of a unit following installation of emissions controls, submit to the executive director the results of:

(i) stack tests conducted in accordance with §117.2035 of this title. For a stack test conducted before March 31, 2005, on a unit not equipped with a continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) that CEMS or PEMS must be installed no later than March 31, 2005, the requirements of §117.2035(e)(6) of this title do not apply; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title (relating to Emission Monitoring System Requirements for Industrial, Commercial, and Institutional Sources). The applicable CEMS or PEMS performance evaluation and quality assurance procedures must be submitted no later than March 31, 2005, except that if the unit is shut down as of March 31, 2005, the CEMS or PEMS performance evaluation and quality assurance procedures must be submitted within 60 days after startup of the unit after March 31, 2005;

(C) no later than March 31, 2005, for any units subject to §117.2010 of this title (relating to Emission Specifications) that stack testing or a CEMS or PEMS performance evaluation and quality assurance has not been conducted under subparagraph (B) of this paragraph, submit to the executive director the results of:

(i) stack tests conducted in accordance with §117.2035 of this title; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title;

(D) comply with the emission reduction requirements of Chapter 101, Subchapter H, Division 3 of this title as soon as practicable, but no later than the appropriate dates specified in that program;

(E) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing, and associated recordkeeping, as soon as practicable, but no later than April 1, 2002; and

(F) comply with all other requirements of Subchapter D, Division 1 of this chapter as soon as practicable, but no later than March 31, 2005.

(2) For sources not subject to Chapter 101, Subchapter H, Division 3 of this title, the owner or operator shall:

(A) install any totalizing fuel flow meters and run time meters required by §117.2035 of this title and begin keeping records of fuel usage as required by §117.2045 of this title no later than March 31, 2005, except that if flue gas cleanup (for example, controls that use a chemical reagent for reduction of NO_x) is installed on a unit before

March 31, 2005, then the emissions monitors required by §117.2035 of this title must be installed and operated at the time of startup following the installation of flue gas cleanup on that unit. However, an owner or operator may choose to demonstrate compliance with the ammonia monitoring requirements through annual ammonia stack testing until March 31, 2005;

(B) no later than 60 days after startup of a unit following installation of emissions controls, submit to the executive director the results of:

(i) stack tests conducted in accordance with §117.2035 of this title. For a stack test conducted before March 31, 2005, on a unit not equipped with a CEMS or PEMS that CEMS or PEMS must be installed no later than March 31, 2005, the requirements of §117.2035(e)(6) of this title do not apply; or, as applicable,

(ii) the applicable CEMS or PEMS performance evaluation and quality assurance procedures as specified in §117.8100(a)(1)(A) and (B) and (b)(2) - (4)(A) of this title. The applicable CEMS or PEMS performance evaluation and quality assurance procedures must be submitted no later than March 31, 2005, except that if the unit is shut down as of March 31, 2005, the CEMS or PEMS performance evaluation and quality assurance procedures must be submitted within 60 days after startup of the unit after March 31, 2005;

(C) for diesel and dual-fuel engines, comply with the restriction on hours of operation for maintenance or testing, and associated recordkeeping, as soon as practicable, but no later than April 1, 2002; and

(D) comply with all other requirements of Subchapter D, Division 1 of this chapter as soon as practicable, but no later than March 31, 2005.

§117.9210. Compliance Schedule for Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources.

(a) The owner or operator of any stationary source of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area that is not a major source of NO_x and is subject to the requirements of Subchapter D, Division 2 of this chapter (relating to Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources) shall comply with the requirements of Subchapter D, Division 2 of this chapter as soon as practicable, but no later than March 1, 2009.

(b) The owner or operator of any stationary source of NO_x that becomes subject to the requirements of Subchapter D, Division 2 of this chapter on or after March 1, 2009, shall comply with the requirements of Subchapter D, Division 2 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

§117.9300. Compliance Schedule for Utility Electric Generation in East and Central Texas.

The owner or operator of each utility electric power boiler or stationary gas turbine located in Atascosa, Bastrop, Bexar, Brazos, Calhoun, Cherokee, Fannin, Fayette, Freestone, Goliad, Gregg, Grimes, Harrison, Henderson, Hood, Hunt, Lamar, Limestone, Marion, McLennan, Milam, Morris, Nueces, Parker, Red River, Robertson, Rusk, Titus, Travis, Victoria, and Wharton Counties shall comply with the requirements of Subchapter E, Division 1 of this chapter (relating to Utility Electric Generation in East and Central Texas) as soon as practicable, but no later than the following dates:

(1) except as provided in subparagraph (C) of this paragraph, May 1, 2003, for units owned by utilities subject to the cost-recovery provisions of Texas Utilities Code, §39.263(b):

(A) the owner or operator shall use the period of May 1, 2003, through April 30, 2004, for the initial annual compliance period. Compliance for each subsequent annual period is on a calendar year basis. For example, the second annual compliance period is January 1, 2004, through December 31, 2004;

(B) the updated final control plan required by §117.3054 of this title (relating to Final Control Plan Procedures) must be submitted by May 31, 2004, and by January 31, 2005; and

(C) the owner or operator shall comply with the ammonia specification of §117.3010(2) of this title (relating to Emission Specifications) by May 1, 2005; and

(2) May 1, 2005, for all other units:

(A) the owner or operator shall use the period of May 1, 2005, through April 30, 2006, for the initial annual compliance period. Compliance for each subsequent annual period is on a calendar year basis. For example, the second annual compliance period is January 1, 2006, through December 31, 2006; and

(B) the updated final control plan required by §117.3054 of this title must be submitted by May 31, 2006, and by January 31, 2007.

§117.9320. Compliance Schedule for Cement Kilns.

(a) Except as specified in subsection (c) of this section, the owner or operator of each portland cement kiln placed into service before December 31, 1999, in Bexar, Comal, Ellis, Hays, and McLennan Counties shall be in compliance with the requirements of Subchapter E, Division 2 of this chapter (relating to Cement Kilns) as soon as practicable, but no later than the following dates:

(1) May 1, 2003, for cement kilns in Ellis County; and

(2) May 1, 2005, for cement kilns in Bexar, Comal, Hays, and McLennan Counties.

(b) Notwithstanding subsection (a)(1) of this section, for a cement kiln in Ellis County that the owner or operator has filed an application for modification of its facility to meet the requirements of Subchapter E, Division 2 of this chapter on or before May 30, 2003, the compliance schedule is extended until six months after the issuance of the permit for operation of a low-NO_x burner and 12 months after issuance of the permit for operation of a secondary combustion system. Such application(s) must relate only to those modifications required to comply with Subchapter E, Division 2 of this chapter, and any issues incident thereto.

(c) The owner or operator of each portland cement kiln in Ellis County shall comply with the requirements of §117.3123 and §117.3142 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements; and Emission Testing and Monitoring for Eight-Hour Attainment Demonstration), and the applicable requirements of §117.3145 of this title (relating to Notification, Recordkeeping, and Reporting Requirements) that are associated with §117.3123 and §117.3142 of this title, as soon as practicable, but no later than March 1, 2009. The provisions regarding extension of compliance schedules in subsection (b) of this section do not apply to this subsection or the requirements of §117.3123, §117.3142, or the applicable requirements of §117.3145 of this title.

§117.9340. Compliance Schedule for East Texas Combustion.

(a) The owner or operator of each stationary, reciprocating internal combustion engine subject to the requirements of Subchapter E, Division 4 of this chapter (relating to East Texas Combustion) shall comply with the requirements of Subchapter E, Division 4 of this chapter as soon as practicable, but no later than March 1, 2009.

(b) The owner or operator of a stationary, reciprocating internal combustion engine that becomes subject to the requirements of Subchapter E, Division 4 of this chapter on or after March 1, 2009, shall comply with the requirements of Subchapter E, Division 4 of this chapter as soon as practicable, but no later than 60 days after becoming subject.

§117.9500. Compliance Schedule for Nitric Acid and Adipic Acid Manufacturing Sources.

All persons affected by the provisions of Subchapter F, Division 1 of this chapter (relating to Adipic Acid Manufacturing) or the provisions of Subchapter F, Division 2 of this chapter (relating to Nitric Acid Manufacturing-Ozone Nonattainment Areas) shall be in compliance as soon as practicable, but no later than November 15, 1999 (final compliance date). All affected persons shall meet the following compliance schedules and submit written notification to the executive director:

(1) no later than April 1, 1994, submit a control plan for compliance as specified in §117.4050 of this title and §117.4150 of this title (relating to Control Plan Procedures);

(2) conduct applicable continuous emissions monitoring system (CEMS) or predictive emissions monitoring system (PEMS) performance evaluation and quality assurance procedures as specified in §117.4040 and §117.4140 of this title (relating to Continuous Demonstration of Compliance); provide previous testing documentation for any claimed test waiver as allowed by §117.4035(d) or §117.4135(d) of this title (relating to Initial Demonstration of Compliance); and conduct applicable initial demonstration of compliance testing as specified in §117.4035 and §117.4135 of this title, by:

(A) no later than January 1, 1994, for affected facilities not performing process modification or installation of a CEMS or PEMS device as part of the control plan specified in §117.4050 and §117.4150 of this title; and

(B) no later than November 15, 1999, for affected facilities performing process modification or installation of a CEMS or PEMS device as part of the control plan specified in §117.4050 and §117.4150 of this title;

(3) within 60 days after the applicable date specified in paragraph (2)(A) or (B) of this section, submit the results of CEMS or PEMS performance evaluation and quality assurance procedures and the results of initial demonstration of compliance testing specified in paragraph (2) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606734
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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DIVISION 2. COMPLIANCE FLEXIBILITY

30 TAC §117.9800, §117.9810

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.102, concerning General Powers, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code. In addition, the sections are proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which states the policy and purpose of the State of Texas and the Texas Clean Air Act; §382.011, concerning General Powers and Duties, which provides the commission with the authority to establish the level of quality to be maintained in the state's air and the authority to control the quality of the state's air; §382.012, concerning State Air Control Plan, which requires the commission to develop plans for protection of the state's air; §382.014, concerning Emission Inventory, which authorizes the commission to require submission information relating to emissions of air contaminants; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; §382.017, concerning Rules, which provides the commission the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; §382.021, concerning Sampling Methods and Procedures, which authorizes the commission to prescribe the sampling methods and procedures; and §382.051(d), concerning Permitting Authority of Commission Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Chapter 382. In addition, the new sections are proposed under federal mandates contained in 42 United States Code, §§7410 *et seq.,* which require states to adopt pollution control measures in order to reach specific air quality standards in particular areas of the state.

The proposed sections implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.021, and 382.051(d).

§117.9800. Use of Emission Credits for Compliance.

(a) An owner or operator of a unit not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) - (8) of this subsection, in whole or in part, by obtaining an emission reduction credit (ERC), mobile emission reduction credit (MERC), discrete emission reduction credit (DERC), or mobile discrete emission reduction credit (MDERC) in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title (relating to Emission Credit Banking and Trading; and Discrete Emission Credit Banking and Trading), unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use:

(1) §§117.105, 117.205, 117.305, 117.1005, 117.1105, or 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

(2) §§117.110, 117.210, 117.1010, or 117.1110 of this title (relating to Emission Specifications for Attainment Demonstration);

(3) §§117.1015, 117.1115, or 117.1215 of this title (relating to Alternative System-Wide Emission Specifications);

(4) §§117.115, 117.215, or 117.315 of this title (relating to Alternative Plant-Wide Emission Specifications);

(5) §§117.123, 117.223, 117.323, 117.423, or §117.3120 of this title (relating to Source Cap);

(6) §§117.2010, 117.3010, or 117.3110 of this title (relating to Emission Specifications);

(7) §§117.410, 117.1310, 117.2110, or 117.3310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration); or

(8) §117.3123 of this title (relating to Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements).

(b) An owner or operator of a unit subject to §§117.320, 117.1020, 117.1120, 117.1220, or 117.3020 of this title (relating to System Cap) may meet the emission control requirements of these sections in whole or in part, by complying with the requirements of Chapter 101, Subchapter H, Division 5 of this title (relating to System Cap Trading) or by obtaining an ERC, MERC, DERC, or MDERC in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title, unless there are federal or state regulations or permits under the same commission account number that contain a condition or conditions precluding such use.

(c) For the purposes of this section, the term "reduction credit (RC)" refers to an ERC, MERC, DERC, or MDERC, whichever is applicable.

(d) Any lower nitrogen oxides (NO_x) emission specification established under this chapter for the unit or units using RCs requires the user of the RCs to obtain additional RCs in accordance with Chapter 101, Subchapter H, Division 1 or 4 of this title and/or otherwise reduce emissions prior to the effective date of such rule change. For units using RCs in accordance with this section that are subject to new, more stringent rule limitations, the owner or operator using the RCs shall submit a revised final control plan to the executive director in accordance with §§117.156, 117.256, 117.356, 117.456, 117.1056, 117.1156, 117.1256, and 117.1356 of this title (relating to Revision of Final Control Plan) to revise the basis for compliance with the emission specifications of this chapter. The owner or operator using the RCs shall submit the revised final control plan as soon as practicable, but no later than 90 days prior to the effective date of the new, more stringent rule. The owner or operator of the unit(s) currently using RCs shall calculate the necessary emission reductions per unit as follows.
Figure: 30 TAC §117.9800(d)

§117.9810. Use of Emission Reductions Generated from the Texas Emissions Reduction Plan (TERP).

(a) An owner or operator of a unit located in the Dallas-Fort Worth eight-hour ozone nonattainment area or in the Houston-Galveston-Brazoria ozone nonattainment area that is not subject to Chapter 101, Subchapter H, Division 3 of this title (relating to Mass Emissions Cap and Trade Program) may meet emission control requirements of the sections specified in paragraphs (1) - (6) of this subsection, by obtaining emission reductions generated from the TERP as specified in subsection (b) of this section:

(1) §§117.205, 117.305, 117.1105, or 117.1205 of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT));

(2) §117.210 or §117.1110 of this title (relating to Emission Specifications for Attainment Demonstration);

(3) §117.215 or §117.315 of this title (relating to Alternative Plant-Wide Emission Specifications);

(4) §117.1120 of this title (relating to System Cap);

(5) §117.223 or §117.323 of this title (relating to Source Cap); or

(6) §117.410 or §117.1310 of this title (relating to Emission Specifications for Eight-Hour Attainment Demonstration).

(b) An owner or operator may obtain emission reductions generated from TERP, as provided in subsection (a) of this section, if:

(1) the owner or operator of the site as defined in §122.10 of this title (relating to General Definitions) contributes to the TERP fund, $75,000 per ton of nitrogen oxides emissions used, not to exceed 25 tons per year or 0.5 tons per day on a site-wide basis;

(2) the owner or operator of the site demonstrates to the executive director that the site will be in full compliance with the applicable emission reduction requirements of this chapter no later than the fifth anniversary of the date that the emission reductions would otherwise be required;

(3) emissions from the site are reduced by at least 80% of the required reductions;

(4) the reductions accomplished under the TERP have not been previously used to meet reduction requirements under a state implementation plan attainment demonstration;

(5) the reductions accomplished under the TERP are used in the same nonattainment area that they are generated; and

(6) the executive director approves a petition submitted by the owner or operator of the site that demonstrates that it is technically infeasible to comply with applicable emission reduction requirements of this chapter above 80% of the required reductions. When considering technical infeasibility the executive director may consider, but will not be limited to:

(A) current technology;

(B) adaptability of technology to a particular source;

(C) age and projected useful life of a source; and

(D) cost benefits at the time of application.

(c) The emissions reductions funded under the TERP, and used to offset commission requirements, must be used to benefit the community where the site using the emissions reductions is located. If there are no eligible emissions reduction projects within the community, the commission may authorize projects in an adjacent community. For purposes of this section, a community means a Justice of the Peace precinct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606735
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 239-5017

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 821. TEXAS PAYDAY RULES

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 821, relating to Texas Payday Rules:

Subchapter A, General Provisions, §821.5

Subchapter C, Wage Claims, §821.42

The Commission proposes the following new section to Chapter 821, relating to Texas Payday Rules:

Subchapter C, Wage Claims, §821.47

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 821 rule change is:

--to reflect recent revisions to Agency Form C-8 referenced in §821.5; and

--to authorize the Commission to allow wage claims to be amended for the purposes of efficiency, expediency, and fairness to all parties.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive, editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendment to Subchapter A:

§821.5. Employment Status: Employee or Independent Contractor.

Section 821.5 adopts Agency Form C-8 as the Agency's official guideline for use in determining employment status. The introductory paragraphs of Form C-8 incorporate a broader explanation of the applicability of the factors used to determine employee or independent contractor status, and specifically note that not all factors listed apply to each and every case.

SUBCHAPTER C. WAGE CLAIMS

The Commission proposes the following amendments to Subchapter C:

§821.42. Timeliness.

Section 821.42(b) is removed in order to allow the Commission, at its discretion, to consider comprehensive wage claims from the investigatory phase through the wage claim hearing. Some wage claims may have to be dismissed as being premature simply because no wages have become due at the time the preliminary wage determination order or hearing decision is issued. In such cases, the claimant would still have the opportunity to refile the wage claim when the wages become due.

The Commission proposes the following new section to Subchapter C:

§821.47. Amendment of Wage Claims.

New §821.47(a) and (b) provide authority for the Commission, at its discretion, to allow a wage claim to be amended for expediency or to prevent injustice. The new rule affords wage claimants the opportunity to add wages that become due subsequent to the filing of the wage claim or to amend the amount of wages at issue, subject to the discretion of the investigator or hearing officer handling the case. New §821.47 will not affect the requirement in Texas Labor Code §61.051(c) that a wage claim be filed no later than the 180th day after the date the wages claimed become due for payment.

An individual who originally files a claim for wages may realize that he or she did not request the full amount of wages allegedly owed; may have wages that continue to become due after the filing date of the wage claim; or may simply have filed the claim a few days before the wages actually became due under the Texas Payday Law. Under current rules, the claimant may not amend the original claim, but instead must file another, separate wage claim for the additional amount. The result is inefficient and burdensome multiple claims, excessive paperwork for all parties, and redundant investigations and hearings.

Under new §821.47, the Commission would have the discretion to allow a claimant to amend the amount of wages originally claimed in order to add wages that have become due. For example, a claimant files a wage claim contending commissions of $200 are due but unpaid by the employer. Subsequent to filing the wage claim, the claimant believes more commissions in the amount of $75 have become due. Under the current rule, the claimant would be required to file an additional, separate wage claim for $75, which may result in another investigation and hearing, separate and apart from the hearing for the original $200 claim. This subsequent investigation and hearing may have been avoided had the claimant been able to add the claim for the $75 prior to the first hearing on the original $200 claim. The new rule will result in efficiency and cost savings and reduce the necessity for more hearings which could likely result if the claimant is obliged to file a separate wage claim for the additional sums owed.

Amending wage claims may raise procedural due process issues, hence the amendments will be subject to the discretion of the Commission. Several factors will affect the Commission's decision on whether to allow the amendment of a wage claim.

One factor is the status of the wage claim. Amending a wage claim that is still in the investigation phase is relatively simple and raises few due process concerns because the Commission has yet to issue a preliminary wage determination order. However, allowing an amendment after the hearing has been held and a decision issued would raise serious due process issues, and would be unlikely to be allowed by the Commission.

Amending a wage claim after the issuance of the preliminary wage determination order, but prior to a hearing, is possible but may require additional procedures to ensure proper notice is given. The hearing officer may:

--proceed with the hearing and include the amended wages with the original claim;

--return the claim for further investigation of the issues; or

--continue the hearing to afford the employer opportunity to conduct a proper defense, gather appropriate records, etc.

Other factors affecting the Commission's disposition of an amendment include whether the amendment is:

--an extension of the same issues in the original claim--e.g., the original claim alleges $200 in hourly wages owed but the amended claim alleges $300 in hourly wages owed for an additional week;

--a new allegation of a different type of payment owed--e.g., the original claim alleges $200 in hourly wages owed and the amended claim alleges $200 in vacation/commissions/bonuses also owed; or

--a significant change in the amount of the original claim--e.g., the original claim alleges $200 in salary owed and the amended claim alleges $5,000 in salary owed.

Proper notice and possibly investigation for new or significantly changed issues still will be required. Although at or prior to the hearing, a claimant may amend the claim regarding the amount allegedly owed, a claimant may not discuss new issues without both parties being afforded proper notice. Should the claimant introduce a new issue at the hearing, the hearing officer retains the discretion to instruct the claimant to file a new, separate wage claim for those wages or to continue the hearing and provide both parties adequate notice of the issues to be discussed.

Example 1: A hearing is set to adjudicate a wage claim of $200 by the claimant from the employer. At the hearing, the claimant argues that vacation pay of $500 also is due from the employer, an issue the claimant previously failed to raise. Unless the employer is ready and willing to proceed with the vacation pay issue at that time, the hearing officer must advise the claimant to file a new wage claim for the vacation pay so it can be properly investigated.

Example 2: A hearing is set to adjudicate a wage claim involving $800 for two weeks' salary. At the hearing, the claimant asserts that since the filing of the wage claim, an additional week is unpaid in the amount of $400 and has become due. The hearing officer must allow the amendment of the wage claim. If the employer is not prepared to discuss the additional week now claimed, the hearing officer must schedule a continuance of the hearing to provide the employer an opportunity to prepare.

Under Texas Labor Code §61.058, hearings conducted under the Texas Payday Law are conducted under the rules and hearings procedures contained in Chapter 815 of this title, which ensure that procedural due process rights are preserved and that a fair hearing is conducted. New §821.47(b) clarifies that the same rules and hearings procedures will govern the wage claim amendment process.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the amendments and new section will be in effect, the following statements apply:

There are no additional costs to the state and to local government as a result of enforcing or administering this proposal.

There are estimated reductions in costs to the state but not to local government as a result of allowing amended wage claims, which will streamline the process and result in fewer claims filed. At this time, it is not possible to quantify the amount of these reductions.

There are no estimated increases or losses in revenue to the state and to local governments as a result of enforcing or administering the proposal.

Enforcing or administering the proposal does not have foreseeable implications relating to the cost or revenues of the state or local governments.

There are no anticipated economic costs to persons required to comply with this proposal, and there will be no adverse economic effect on small businesses or micro businesses.

These conclusions are made on the basis that the proposal, specifically the Form C-8 changes, are to clarify that not all 20 factors included in the guidelines may apply in each case, and that such clarification does not constitute a substantive change.

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposal.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

LaSha Lenzy, Director of the Unemployment Insurance Division, has determined that for each year of the first five years the amendments and new section are in effect, the public benefit anticipated as a result of enforcing the proposal will be to ensure compliance with federal and state requirements concerning factors for determining employee and independent contractor status, and to streamline and expedite the wage claim process.

PART IV. COORDINATION ACTIVITIES

Comments on the proposal may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §821.5

The amendments are proposed under Texas Labor Code §301.061 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments affect Texas Labor Code, Chapter 302.

§821.5. Employment Status: Employee or Independent Contractor.

The Commission adopts the following form, Form C-8, as its official guideline for use in determining employment status.

Figure: 40 TAC §821.5

~~[Figure: 40 TAC §821.5]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2006.

TRD-200606628

Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 475-0829

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SUBCHAPTER C. WAGE CLAIMS

40 TAC §821.42, §821.47

The amendments and new rule are proposed under Texas Labor Code §301.061 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The amendments and new rule affect Texas Labor Code, Chapter 302.

§821.42. Timeliness.

(a) (No change.)

~~[(b) The Commission shall deem a wage claim invalid if filed before the wages are due for payment.]~~

(b) ~~[(c)]~~ The Commission shall suspend the time limit for filing a wage claim only for those reasons required by law including, but not limited to, bankruptcy stays.

§821.47. Amendment of Wage Claims.

(a) At the discretion of the Commission, a wage claim may be amended for expediency or to prevent injustice.

(b) Wage claim amendments are subject to the rules and hearing procedures set forth in Chapter 815 of this title (relating to Unemployment Insurance), except to the extent that such sections are clearly inapplicable or contrary to provisions set out under this chapter or under the Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 12, 2006.

TRD-200606629
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 475-0829

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL POLICY
SUBCHAPTER D. PUBLIC PARTICIPATION PROGRAMS

43 TAC §2.67

The Texas Department of Transportation (department) proposes the adoption of new §2.67, concerning the Landscape Partnership Program.

EXPLANATION OF PROPOSED NEW SECTION

New §2.67, Landscape Partnership Program, allows local governments or private entities to support the aesthetic improvement of the state highway system by donating 100% of the development, establishment, and maintenance of a landscape project on the right of way. The section also specifies the eligibility and signage requirements for the program.

The language in subsection (a) explains the purpose of the Landscape Partnership Program. The program improves the aesthetics on state highway right of way by allowing other entities to participate in landscaping projects on state-owned right of ways.

Subsection (b) maximizes the use of taxpayer revenue by providing that a local government, a private business, or a civic organization may participate in the program. Private businesses or civic organizations can participate by providing donations to a local government participating in the program or by donations directly to the department. All donations will be processed under Title 43, Chapter 1, Subchapter G, Texas Administrative Code, including the acceptance process and the donation agreement. As an incentive to participate in the program, the rule allows a sign to be erected at the project site announcing the entity's participation in the program. The sign must be erected and maintained by the donor for the duration of the project agreement.

Subsection (c) provides the application requirements. Applications must be submitted to the local district engineer and shall include the date, donor contact information, the location of the proposed site, and a project concept plan containing sketches, drawings, specifications, and descriptive text as necessary for the department to consider the application.

Subsection (d) provides the general conditions each project must meet for consideration in the program. The language provides that, if the project is approved, the work will be performed by the local government or donor. This exception to allow other entities access and authority to perform work on state right of way maximizes the effectiveness of the program.

In order to protect the safety of the traveling public and the integrity of the state highway system, the language provides that the department will only consider sites that are not scheduled for future construction; that contain sufficient space to permit the project without raising safety concerns; that do not have drainage issues; and that do not contain utilities, driveways, pavement, sidewalks, highway signs or other highway system fixtures. The design project must be acceptable to the department and must not contain flagpoles, pennant poles, fountains, water features, statuary, sculptures, or other art objects. In addition, the plant material or fixtures cannot require an intense level of continued establishment or maintenance nor can the design elements incorporate a logo or other advertisement.

For public safety purposes, subsection (e) provides the department the authority to consider additional factors such as width of the right of way, congestion, sight distance, and maintenance requirements in approving a proposed project. This subsection also states that the sign used to recognize the local government or donor entity shall be four feet by four feet and shall conform to all requirements of the Texas Manual on Uniform Traffic Control Devices. It also provides that the donor or local government

shall pay all costs associated with the sign. In addition, this subsection also states that the program is independent and cannot be combined with any other landscape-related programs sponsored by the department.

In order for the department to maintain adequate control over its right of way, subsection (f) provides that a written agreement must be signed prior to the initiating of any work on the project. The agreement shall be in a form prescribed by the department and shall be for a period not less than two years. A donation schedule shall be included in the agreement if it is applicable to the particular project.

Subsection (g) outlines the procedure for modifying or terminating the agreement. The department has sole discretion on any modifications to the agreement. The language provides that, if the project is not installed within one year, the agreement is void. It also provides that the department can remove the project if the local government or donor fails to maintain the project according to the agreement.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that, for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Mark A. Marek, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT

Mr. Marek has also determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be to improve the aesthetics of the state highway system by allowing local governments and private entities to provide landscaping on the right of way. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §2.67 may be submitted to Mark A. Marek, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 29, 2007.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§2.67. Landscape Partnership Program.

(a) Purpose. The Landscape Partnership Program (program) allows private businesses, civic organizations, and local governments an opportunity to support the aesthetic improvement of the state highway system by donating the project development, establishment, and maintenance of a landscaped section of the state highway system. This section sets forth policies and procedures governing the program.

(b) Participation.

(1) Eligible entities. A local government or a private business or civic organization may develop, establish, and maintain the landscape of a section of the state highway system upon approval of the district engineer. A private business or civic organization is eligible to participate:

(A) as a donor through the local government by providing donations to the local government; or

(B) as a nongovernmental donor by providing donations directly to the department.

(2) Compliance with other rules. The department will process a donation under paragraph (1)(B) of this subsection in accordance with the requirements of Chapter 1, Subchapter G of this title (relating to Donations). If a provision of this section conflicts with a provision of Chapter 1, Subchapter G of this title, this section will prevail.

(3) Sign. A sign may be erected at the project site, announcing participation in the program. The sign will be erected by the donor and will be maintained for the duration of the project agreement.

(c) Application.

(1) A local government or donor that desires to participate or to continue to participate in the program shall submit an application to the district engineer of the district in which the project site is located.

(2) The application shall be in the form prescribed by the department and shall at a minimum include:

(A) the date of application;

(B) the name, telephone number, and complete mailing address of the local government or donor;

(C) the highway section the local government or donor is interested in developing, establishing, and maintaining; and

(D) the project concept plan containing sketches, drawings, specifications, and descriptive text as may be required by the department to evaluate the project under required general, site, and design consideration, to determine the proposed design intent.

(d) Conditions. In order to participate in the program, each project must meet the department's approval under general, site, and design considerations.

(1) General considerations. Normally, work on state highway right of way will be performed by state forces or under contracts awarded and administered by the department. Under this program, an exception will be granted to allow a local government or donor to perform work on state highway right of way if the project is approved by the district engineer.

(2) Site considerations. For sites to be approved by the department, the following site conditions must be met. The site must:

(A) not be scheduled for future construction, as defined within the department's current unified transportation plan, that would conflict with the activities proposed on the project;

(B) contain sufficient right of way to reasonably permit planting and landscaping operations without conflicting with safety, geometric, and maintenance considerations;

(C) not contain overhead or underground utilities, driveways, pavement, sidewalks, or highway system fixtures including traffic signage or signalization that would conflict with the planting or landscaping operations proposed under the project; and

(D) not contain existing drainage conditions that will be obstructed or otherwise interfered with by the project.

(3) Design considerations. For sites to be approved by the department, the following design considerations must be met.

(A) The project design, as shown on the project concept plan, must be acceptable to the department.

(B) Unless otherwise approved by the department, the project design may not include the following design elements:

(i) plant material or fixtures that, in the opinion of the department, require an intense level of continued establishment and maintenance in order to assure the effectiveness and function within the design;

(ii) flagpoles or pennant poles;

(iii) fountains or water features;

(iv) statuary, sculpture, or other art objects; and

(v) logos or other advertising.

(e) General limiting conditions and eligibility. Because of administrative, legislative, and financial constraints, the program shall be subject to the following terms.

(1) The department will consider such factors as width of right of way, geometrics, congestion, sight distance, and maintenance requirements in determining the acceptability of any proposed project.

(2) Signage for the program shall be four feet by four feet and shall conform to the current Texas Manual on Uniform Traffic Control Devices. All costs associated with signage shall be paid by the local government or donor.

(3) Work under the program shall not be combined with any other landscape-related programs sponsored by the department.

(f) Agreement.

(1) If the proposed project as submitted under subsection (c) of this section is approved by the department, the local government or donor shall enter into a written agreement with the department providing participation in the program. Work on any phase of the project may not begin until the agreement is fully executed by both parties.

(2) The agreement shall be in the form prescribed by the department and shall at a minimum include the following terms.

(A) The project design plan shall consist of plans, sketches, drawings, notes, estimates, maintenance work schedules, and specifications as required by the department.

(B) Any changes to the agreement shall be enacted by written amendment.

(C) The parties shall not assign or otherwise transfer their obligations under this agreement, except with prior written consent of the other party.

(D) The project design plan shall be subject to the review and satisfactory approval by the department prior to installation.

(E) Violation or breach of contract terms shall be grounds for termination of the agreement by the department. In the event of disputes as to obligations under the agreement, the department's decision shall be final and binding.

(F) The local government or donor and its contractors, if any, shall to the extent provided by law, furnish certificates of insurance, guarantees of self insurance if appropriate, and indemnification as may be prescribed by the department.

(G) The local government or donor shall provide, erect, and maintain to the satisfaction of the department any barricades, signs, and traffic handling devices necessary to protect the safety of the traveling public while performing any work on the project.

(H) The agreement shall be for a period of not less than two years. If after two years, the local government or donor desires to continue the project, the agreement shall be subject to renewal.

(3) A donation schedule, if applicable, shall be outlined in the agreement.

(g) Modification/termination of agreement. The agreement as cited in subsection (f) of this section may be modified in any manner at the sole discretion of the department.

(1) If the project is not installed within one year, the agreement becomes void.

(2) If the local government or donor fail to maintain the project according to the schedule outlined in the agreement, the project will be subject to removal at the department's discretion.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606687
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: January 28, 2007
For further information, please call: (512) 463-8683

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 22. EXAMINING BOARDS

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 172. TEMPORARY AND LIMITED LICENSES

SUBCHAPTER C. LIMITED LICENSES

22 TAC §172.14

The Texas Medical Board has withdrawn from consideration the proposed new §172.14 which appeared in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8069).

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606679
Donald W. Patrick, M.D., J.D.
Executive Director
Texas Medical Board
Effective date: December 15, 2006
For further information, please call: (512) 305-7016

CHAPTER 190. DISCIPLINARY GUIDELINES

SUBCHAPTER B. VIOLATION GUIDELINES

22 TAC §190.8

The Texas Medical Board has withdrawn from consideration the proposed amendment to §190.8 which appeared in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8069).

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606680
Donald W. Patrick, M.D., J.D.
Executive Director
Texas Medical Board
Effective date: December 15, 2006
For further information, please call: (512) 305-7016

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §§81.11, 81.13 - 81.24, 81.27, 81.29

The Office of the Secretary of State adopts amendments to §§81.11, 81.13 - 81.24, 81.27, and 81.29 concerning voter registration. The amendments were proposed in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6437). Sections 81.11, 81.13 - 81.15, 81.17, 81.20 - 81.24, 81.27, and 81.29 are adopted without changes and will not be republished. Sections 81.16, 81.18, and 81.19 are adopted with changes and will be republished. These rules concern disbursement of funds under the Texas Election Code, Chapter 19. The rules provide for direct deposit of Chapter 19 reimbursements and outline the procedures county voter registrars will follow to obtain such reimbursements.

These amendments will allow for a more efficient operation of the Election Code, Chapter 19 fund for both the county voter registrars and the Office of the Secretary of State. These rules designate which goods and services are reimbursable with Chapter 19 funds and detail procedures for county voter registrars seeking reimbursement.

Shelia Latting, Election Funds Manager, and Ann McGeehan, Elections Director of the Office of the Secretary of State, reviewed comments submitted on the proposed amendments to §§81.16, 81.18, and 81.19. The comments were received via email and/or orally during the Annual Secretary of State's Election Law Seminar for Voter Registrars on August 16 - 18, 2006. Many voter registrars commented that it would be inefficient to open up a separate bank account for the deposit of Chapter 19 funds and suggested to instead allow for the establishment of a separate fund in an existing bank account. The Office of the Secretary of State agrees with this comment, and action was delayed until after the November elections. Accordingly, §81.19 as adopted now states that payment will be made to a county in a new or pre-existing bank account. In addition, language was added to §81.19 to identify the importance of establishing separate records to maintain the fund accounts specifically established for Chapter 19 funds.

The amendments are adopted under the Texas Election Code, §31.003 and §19.002(b), which provides the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws, and in performing such duties, to prepare detailed and comprehensive written directives and instructions based on such laws, and to adopt rules consistent with the Election Code.

The Texas Election Code, Chapter 19, §19.002(b), is affected by the adoption.

§81.16. Electronic Submission of Chapter 19 Purchase Request Required for Payment.

The Agency shall prescribe an electronic web-based application format for the submission of Chapter 19 Purchase Request for use by each county voter registrar. In addition to any supporting documentation required by this chapter, the voter registrar must submit a signed facsimile or signed scanned image of the supporting documentation via attachment to the electronic submission. If a Chapter 19 Purchase Request is received by the Agency seeking funding which is not allowable under the Texas Election Code, Chapter 19, these rules, and Agency directives, the Agency shall so notify the voter registrar in writing within 14 business days of receipt of such form via email, written notification or election response from web-based system. All electronic requests must be submitted through the designated secured electronic web-based application designed only for Chapter 19 purchases, located on the Office of the Secretary of State web site. Facsimile supporting documentation received after 5:00 p.m. will be considered to be received on the next business day.

§81.18. Approval Requirements for the Secretary of State.

A Chapter 19 Purchase Request shall not be processed for payment without the written or electronic approval of the Election Funds Manager and the Director of Elections.

§81.19. Method of Payment.

Except for travel advances provided by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), all payments made from Chapter 19 funds will be issued on a reimbursement basis, only after the goods or services have been received. An invoice from the vendor must be submitted with all Chapter 19 Purchase Requests. The signed timesheet required by §81.22 of this title (relating to Use of Chapter 19 Funds for Temporary Employees) will be considered a "vendor's invoice" for purposes of this rule. Payments issued by the Comptroller of Public Accounts will be payable to the county, in the form of direct deposit to a new or pre-existing bank account as directed by the voter registrar. The county voter registrar will use such account for the purpose of depositing and/or expending Chapter 19 funds. The voter registrar shall not commingle Chapter 19 funds with any other county fund. The voter registrar shall complete fund reconciliations on a monthly basis. Fund general ledgers or activity statements must be provided to the Agency semiannually and are considered part of the Chapter 19 fund records and must be available if requested by the Office of the Secretary of State for audit purposes. Except for travel expenses authorized by §81.23 of this title (relating to Travel Using Chapter 19 Funds Authorized), no cash payments may be made from Chapter 19 funds. All disbursement payments of Chapter 19 funds must be made by check or state transfer drawn on the Chapter 19 prescribed bank account as described above. Please be advised, whether the accounts are combined

with an existing account or separate accounts are established, it will be the county voter registrar's legal responsibility to maintain a separate bookkeeping system to identify the debits and credits relating to all activities from the receipt of Chapter 19 Funds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606675
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: January 3, 2007
Proposal publication date: August 18, 2006
For further information, please call: (512) 463-9871

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TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §§1.101 - 1.107

The Finance Commission of Texas (commission) adopts the repeal of 7 TAC, Part 1, Chapter 1, Subchapter A, §§1.101 - 1.107, concerning General Provisions. The commission has determined as part of a rule review that this subchapter more effectively belongs in Part 5, in a new chapter (Chapter 83, concerning Consumer Loans). Therefore, these rules are being adopted for repeal and new rules are adopted elsewhere in this issue of the *Texas Register*. The repeal is adopted without changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8929).

The commission received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606741
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 4, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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SUBCHAPTER B. INTERPRETATIONS AND ADVISORY LETTERS

7 TAC §1.201

The Finance Commission of Texas (commission) adopts amendments to §1.201, concerning Interpretations and Advisory Letters. The amendments are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8930).

The purpose of the amendments to §1.201 is to make changes which are technical in nature, including revisions in grammar and format. There is also one revision to remove a reference to prior law.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§1.201. Interpretations and Advisory Letters.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advisory letter--A letter by the commissioner or a member of the staff of the Office of Consumer Credit Commissioner providing an informal advisory response to an inquiry concerning provisions of the Texas Finance Code, Title 4, Subtitle A or B, and is not an interpretation as defined in paragraph (3) of this subsection.

(2) Commissioner--The commissioner of the Office of Consumer Credit Commissioner of the State of Texas.

(3) Interpretation--A letter issued by the consumer credit commissioner and approved by the Finance Commission of Texas pursuant to Texas Finance Code, §14.108 interpreting a provision of Texas Finance Code, Title 4, Subtitle A or B in light of certain relevant facts provided by the requestor.

(b) Procedures for Finance Commission of Texas interpretations. Any person may submit a request for an interpretation. All requests must be directed to the commissioner and contain the following items:

(1) Statement requesting interpretation. An explicit statement that an interpretation approved by the Finance Commission of Texas is desired.

(2) Description of transaction, facts, and legal issues. A concise description of the contemplated transaction or activity contemplated, the legal issue raised, and all facts necessary to reach a conclusion in the matter.

(3) Pending litigation. A statement whether, to the best of the requestor's knowledge, the issue to be considered is an issue in pending litigation. Matters in litigation will ordinarily not be answered.

(4) Fee. A fee of $300 will be charged for an interpretation to compensate the agency for the expense involved in researching and answering the request. The payment of $300 should be submitted with the request. The commission may determine and remit a partial refund if deemed applicable. The commission may waive the fee.

(5) Additional information. A requestor should also identify each provision of law involved, and indicate the requestor's opinion of how the legal issues should be resolved, and the basis for that opinion, including an analysis of any relevant court decisions, as well as, all prior interpretations to which the request relates.

(6) Processing time. Within 10 business days of receipt of a valid request pursuant to this subsection, the request will be filed with the Texas Register for publication. Upon publication in the Texas Register, any party may within 31 calendar days submit briefs or proposals pertaining to the request. The agency will draft an interpretation or a response and present it to the Finance Commission of Texas for consideration. Within 10 business days of an action of the Finance Commission of Texas, a summary of the interpretation or the response will be filed with the Texas Register for publication. Copies of interpretations or responses shall contain a notation of approval and the date of action by the Finance Commission of Texas.

(c) Office of Consumer Credit Commissioner advisory letters. Each advisory letter shall contain the following notation: "THIS ADVISORY LETTER IS NOT AN INTERPRETATION APPROVED BY THE FINANCE COMMISSION OF TEXAS PURSUANT TO TEXAS FINANCE CODE, §14.108. If an interpretation approved by the Finance Commission of Texas is desired, then an interpretation should be requested pursuant to the procedures set forth in 7 Texas Administrative Code §1.201(b)."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606742
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 4, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§1.301 - 1.310

The Finance Commission of Texas (commission) adopts the repeal of 7 TAC, Part 1, Chapter 1, Subchapter C, §§1.301 - 1.310, concerning Application Procedures. The commission has determined as part of a rule review that this subchapter more effectively belongs in Part 5, in a new chapter (Chapter 83, concerning Consumer Loans). Therefore, these rules are being adopted for repeal and new rules are adopted elsewhere in this issue of the *Texas Register*. The repeal is adopted without changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8931).

The commission received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606743
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Effective date: January 4, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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SUBCHAPTER D. LICENSE

7 TAC §§1.401 - 1.407

The Finance Commission of Texas (commission) adopts the repeal of 7 TAC, Part 1, Chapter 1, Subchapter D, §§1.401 - 1.407, concerning License. The commission has determined as part of a rule review that this subchapter more effectively belongs in Part 5, in a new chapter (Chapter 83, concerning Consumer Loans). Therefore, these rules are being adopted for repeal and new rules are adopted elsewhere in this issue of the *Texas Register*. The repeal is adopted without changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8931).

The commission received no written comments on the proposal.

The repeal is adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules for the enforcement of the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adopted repeal are contained in Texas Finance Code, Chapter 342.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200606744

Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
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Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 26. PERPETUAL CARE CEMETERIES

7 TAC §26.2, §26.4

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), adopts amendments to §26.2, concerning perpetual care cemetery records, and §26.4, concerning ordering and setting burial markers and monuments. The amendments are adopted without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8932). The text will not be republished.

As explained in this preamble, the adopted amendments as a general matter reflect and clarify the department's present interpretation and application of the requirements of Chapter 26.

Section 26.2 specifies the records that a perpetual care cemetery must maintain. In addition to reflecting the department's existing practice, the amendments to §26.2 facilitate the examination process and ensure the availability of information required for timely and correct account reconciliation. The amendment to §26.2(b)(1) requires that information be maintained in a file that is readily accessible to the department. The amendment to §26.2(b)(1)(H) requires that a perpetual care cemetery receive trustee or depository statements related to the cemetery's perpetual care trust at least quarterly. The amendment to §26.2(b)(3) requires that purchasers' separate files be organized alphabetically or numerically. Finally, the amendment to §26.2(c)(1) clarifies where records may be maintained and the banking commissioner's authority to approve alternate locations.

Section 26.4 establishes the time periods within which a perpetual care cemetery must order and set burial markers and monuments. The adopted amendment to §26.4(a)(4) revises the definition of "you" or "I" to provide that a purchaser's payment to a perpetual care cemetery's sales representative or agent is considered payment to the perpetual care cemetery for purposes of §26.4(b)(1). If a perpetual care cemetery authorizes its sales representative or agent to receive a purchaser's payment on behalf of the cemetery and the representative or agent in fact receives payment, the payment constitutes payment to the cemetery within the meaning of the §26.4(b)(1) triggering event.

The adopted amendment to §26.4(b) clarifies that a perpetual care cemetery must pay the amount, if any, required by a vendor or manufacturer of a marker to initiate an order. Payment must be made only if and to the extent the vendor or manufacturer requires payment at the time the order is placed. The amendment also extends from 10 days to 21 days the time within which an order must be placed after all the applicable events listed in the subsection have occurred.

The commission received no comments in response to the publication of the proposed amendments.

The amendments are adopted under the authority of Health and Safety Code, §712.008, which authorizes the commission to adopt rules to administer and enforce Health and Safety Code, Chapter 712, relating to Perpetual Care Cemeteries, and Health & Safety Code, §712.008(b), which authorizes the commission to adopt rules establishing reasonable standards for the timely placement of burial markers and monuments in a perpetual care cemetery.

Health and Safety Code, Chapter 712, is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 31. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

The Finance Commission of Texas (commission), on behalf of the Texas Department of Banking (department), adopts amendments to §31.11, concerning the requirements to legally engage in the business of private child support enforcement in Texas; §31.14, concerning the requirements for the contracts with clients; §31.31, concerning displaying certificates of registration; and §31.54, concerning requirements for closing a registered office. The commission also adopts the repeal of §31.35, concerning issuance of temporary certificates of registration. The amendments to §§31.11, 31.14, 31.31, and 31.54 and the repeal of §31.35 are adopted without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8933) and will not be republished.

The commission received no comments regarding the proposed amendments or repeal.

The proposed revisions are nonsubstantive and impose no requirements in addition to those that exist at present.

Section 31.11(b)(8) refers to §31.14(c), but should refer to §31.14(d). Section 31.11(b)(8) is amended to refer to §31.14(d).

Section 31.14(c) is amended to make it clear that the department will provide sample clear language provisions, but it will not provide a model clear language contract.

Section 31.14(d) is amended to correct an improper verb tense.

Section 31.14(d)(2)(R) is added because clear language rules recommend that the only words that should be capitalized in contracts are those that are capitalized when writing in English. It

is more difficult to read sentences containing capitalized words that are not typically capitalized when writing in English.

Section 31.31(b)(1) is amended to reflect that instead of containing a link to each registered agency's certificate of registration, the department's website lists each registered private child support enforcement agency (agency).

Section 31.35 is repealed because the need to issue temporary certificates of registration existed only when the department first began registering agencies.

Section 31.54(a)(4) is amended to shorten the time an agency has to notify its clients that it will close a registered office from 45 days to 30 days prior to closing. Further, §31.54(a)(4) is amended to require an agency closing an office to submit written certification to the department that notification of the office closing was sent to the agency's clients served by the office being closed. The prior requirement had the agency submit to the department a copy of the letter. Section 31.54(a)(4) is further amended to require that the notification sent to clients contain the address of the successor registered office that will serve them.

The amended rules and the rule repeal are adopted under the provision of the Texas Finance Code, §396.051, which authorizes the commission to adopt reasonable rules for administering Title 5, Chapter 396, Texas Finance Code.

SUBCHAPTER B. HOW DO I REGISTER MY AGENCY TO ENGAGE IN THE BUSINESS OF CHILD SUPPORT ENFORCEMENT?

7 TAC §31.11, §31.14

The amendments are adopted under the authority of The Finance Commission of Texas under Texas Finance Code, Section 396.051(b), which provides that the Finance Commission shall adopt rules as necessary for the administration of Texas Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

The amendments affect Finance Code, Chapter 396.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sarah J. Shirley
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Texas Department of Banking
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SUBCHAPTER C. WHAT ARE MY AGENCY'S RESPONSIBILITIES AFTER REGISTRATION?

7 TAC §31.31

The amendments are adopted under the authority of The Finance Commission of Texas under Texas Finance Code, Section 396.051(b), which provides that the Finance Commission shall adopt rules as necessary for the administration of Texas Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

The amendments affect Finance Code, Chapter 396.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §31.35

The repeal is adopted under Finance Code, §396.051(b), which provides that the Finance Commission shall adopt rules as necessary for the administration of Texas Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

The repeal affects Finance Code, Chapter 396.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. WHAT ARE THE DEPARTMENT REQUIREMENTS FOR ADDING AN OFFICE, CLOSING AN OFFICE, RELOCATING AN OFFICE, TRANSFERRING CONTROL OF MY AGENCY, CEASING TO DO BUSINESS, OR CHANGING MY EMAIL OR WEB SITE ADDRESSES?

7 TAC §31.54

The amendments are adopted under the authority of The Finance Commission of Texas under Texas Finance Code, Section 396.051(b), which provides that the Finance Commission shall adopt rules as necessary for the administration of Texas Finance Code, Chapter 396, entitled Private Child Support Enforcement Agencies.

The amendments affect Finance Code, Chapter 396.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sarah J. Shirley
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PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 82. ADMINISTRATION

7 TAC §82.1, §82.2

The Finance Commission of Texas (commission) adopts amendments to §82.1, concerning Custody of Criminal History Record Information, and §82.2, concerning Public Information Requests; Charges. The amendments are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8936).

The purpose of the amendments to §82.1 is to update incorrect citation references, add a reference to other law, and to add clarification In subsection (a), references to the Texas Finance Code have been added to replace the prior codification in Texas Civil Statutes. The addition of a citation to the Texas Government Code has been made to reference the definition used for "criminal history record information." Clarifying language has also been amended in subsection (a) concerning the use of criminal history record information with current license holders.

The purpose of the amendments to §82.2 is to conform the rules to the commission's current practice and to add clarification. In subsection (b), the last sentence has been updated to reflect the charging of no fee for 50 or less standard-size copies. In subsections (c)(2), (c)(3), and (d)(3), amendments have been made to reflect optional as opposed to mandatory charging of certain items, with the remaining items reflecting the agency's current mandatory charges for public information requests. In addition, in subsection (c)(6), a reference has been added to Texas Government Code, §552.263, in order to clarify the agency's authority to request a deposit or bond when charges exceed $100. The remaining changes are technical and nonsubstantive in nature.

The commission received no written comments on the proposal.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Chapter 14 and Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §14.157 authorizes the commission to adopt rules governing the custody and use of criminal history record information obtained under Texas Finance Code, Chapter 14, Subchapter D. Texas Government Code, §552.230 authorizes governmental bodies to adopt reasonable rules of procedure under which public information may be inspected and copied.

The statutory provisions (as currently in effect) affected by the adopted amendments are contained in Texas Finance Code, Chapter 14 and Title 4.

§82.1. Custody of Criminal History Record Information.

(a) The use of "criminal history record information," as defined by Texas Government Code, §411.082, obtained or maintained by the Office of Consumer Credit Commissioner pursuant to Texas Finance Code, Chapter 14, Subchapter D, shall be limited to assisting the commissioner in determining the character and fitness of an applicant for a license issued by the consumer credit commissioner or in determining the character and fitness of a current license holder of the consumer credit commissioner. All criminal history record information received by the Office of Consumer Credit Commissioner is confidential information and is for the exclusive use of the Office of Consumer Credit Commissioner. Except on court order or as otherwise provided by Texas Finance Code, §14.155, such information may not be disclosed to any person or agency.

(b) Access to criminal history record information maintained by the Office of Consumer Credit Commissioner shall be limited to the following persons:

(1) consumer credit commissioner;

(2) assistant commissioner;

(3) any attorney employed by the Office of Consumer Credit Commissioner or an assistant attorney general representing the interest of the Office of Consumer Credit Commissioner;

(4) employees of the licensing section; and

(5) any person appointed to act on behalf of or in the stead of any of the above.

§82.2. Public Information Requests; Charges.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The Office of Consumer Credit Commissioner.

(2) Commissioner--The consumer credit commissioner.

(3) Readily available information--Public information that already exists in printed form, or information that is stored electronically, and is ready to be printed or copied without requiring any programming, but not information that requires more than 30 minutes to prepare for release as a result of required redaction for the purpose of deleting information that is confidential by law.

(4) Standard-size copy--A printed impression on one side of a piece of paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides shall be counted as two copies.

(b) The request. Upon receipt of a written request from a requesting party, including another state or federal agency, which clearly identifies the public records requested to be copied or examined pursuant to Texas Government Code, Chapter 552 (the Texas Public Information Act), the agency shall make every reasonable effort to provide the information in the manner requested as quickly as possible without disruption of normal business activities, provided that information that is confidential by law will not be provided except under court order, Attorney General directive, or other legal process. All inquiries will be

treated equally. Fees imposed by this section may be waived or reduced at the discretion of the consumer credit commissioner, provided that no fee will be charged for requests for 50 or less standard-size copies of readily available information.

(c) Copy and service charges.

(1) A charge of $.10 per page will be made for standard-size copies of readily available information.

(2) For standard-size copies of more than 50 pages of readily available information, a charge of $15 per hour of personnel time spent locating, copying, and preparing the information for delivery or inspection shall be added to the copy charges specified by paragraph (1) of this subsection. A charge of $3.00 per hour for overhead may also be added to the charges.

(3) For standard-size copies of information that is not readily available, a charge of $15 per hour of personnel time spent locating, copying, redacting confidential information, and preparing the information for delivery or inspection shall be added to the copy charges specified by paragraph (1) of this subsection. A charge of $3.00 per hour for overhead may also be added to the charges. If applicable, a charge of $.50 per minute of computer time may also be added to the charges.

(4) If certification of copies is requested, an additional charge of $5.00 per certification will be added to the computed fee.

(5) The cost for non-standard-size copies shall be determined by reference to any recommended standards promulgated by the Office of the Attorney General, Title 1, Part 3, §§70.01-70.11, or as such rules may be amended.

(6) If the anticipated charges under this subsection plus anticipated charges under subsection (d) of this section exceed $100, the agency may require cash prepayment or bond equal to the total anticipated charges prior to release of the requested information, as per Texas Government Code, §552.263.

(d) Delivery charges.

(1) U.S. mail. When copies are required to be mailed, the cost of postage will be added to the computed fee.

(2) Expedited delivery. When copies are required to be sent by overnight delivery service or other expedited delivery, the cost of the service will be added to the computed fee unless the requestor arranges to pay the delivery charges directly.

(3) Faxing. The charge for faxing copies is $.10 per page. The agency may charge $.50 per page for telephone delivery within the same area code, and $1.00 per page for telephone delivery to a different area code. The agency may refuse to fax more than 20 pages of information and may require another form of delivery.

(e) Inspection of records. Records access for purposes of inspection will be by appointment only and will only be available during regular business hours of the agency. If the safety of any public record or the protection of confidential information is at issue, or when a request for inspection would be unduly disruptive to the ongoing business of the office, physical access may be denied and the option of receiving copies at the usual fees shall be provided.

(f) Agency officer for public information. The commissioner or the commissioner's designee is the agency's officer for public information.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Leslie L. Pettijohn
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CHAPTER 83. CONSUMER LOANS

SUBCHAPTER A. GENERAL PROVISIONS

7 TAC §83.101, §83.102

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 83, §83.101 and §83.102, concerning Consumer Loans. The new rules contained in 7 TAC §83.101 and §83.102 outline Subchapter A, concerning General Provisions. These new rules are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8937).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules being repealed, as found in 7 TAC, Subchapter A, §1.101 and §1.102, concerning General Provisions. The commission's adopted repeal of Subchapter A is published elsewhere in this issue of the *Texas Register*.

The commission received one written comment on the proposal from Black, Mann & Graham, L.L.P. The comment will be addressed under the rules commented upon, §83.102.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the adopted new rules as a result of the agency's rule review of former Subchapter A under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule being repealed to the new rule being adopted are technical and nonsubstantive in nature.

Section 83.101 (former §1.101) outlines the purpose and scope of the chapter.

Section 83.101(b)(1)(C) has been revised and split into clauses in order to clarify the ways that consumer loans under Texas Finance Code, Chapter 342 may be secured. These security methods have not changed, as the language has merely been clarified.

Section 83.102 (former §1.102) provides general definitions to be used throughout the chapter.

A reference to Texas Finance Code, §342.259 has been added to paragraphs (1) and (11) of §83.102 to reflect the authorized charges allowed under this new statutory provision. In addition,

the terms "regulated" and "consumer" have switched positions in paragraph (15), in order to reflect the chapter's primary use of the term "regulated," with the alternate term being "consumer," i.e. in reference to a "regulated loan license."

The commenter states that the proposed version of §83.102(5) omits certain entities from the definition of "authorized lender" and recommends that the commission revise the rule so that it will be more in harmony with Texas Finance Code, §342.051(c). The commission agrees with the commenter's suggestion and has revised §83.102(5) accordingly for this adoption.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.101. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to assist in the administration and enforcement of Texas Finance Code, Chapter 342.

(b) Scope.

(1) This chapter applies to all persons engaged in the business of making, transacting, or negotiating loans subject to Texas Finance Code, Chapter 342. As such, this chapter only applies to lenders and brokers in the business of making, transacting or negotiating loans that:

(A) contract for, charge, or receive interest in excess of 10% per year;

(B) are loans extended primarily for personal, family, or household use; and

(C) are either:

(i) unsecured or secured by a lien on real estate;

(ii) secured under a secondary mortgage loan; or

(iii) secured by personal property.

(2) This includes term loans extended primarily for personal, family, or household purposes.

(3) This also includes a loan broker who arranges, negotiates, or brokers loans for a lender that funds the loan. This chapter does not apply to any loans made under Texas Finance Code, Chapters 301 - 308 or Chapter 339, including for example, commercial and agricultural loans.

§83.102. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 342 have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Acquisition charge--An interest charge authorized for making the cash advance under the authority of Texas Finance Code, §342.252 and §342.259.

(2) Add-on interest--A method for calculating precomputed interest in which the borrower agrees to pay the total of payments, which includes both interest and principal, as opposed to agreeing to pay the principal plus interest as it accrues at a certain rate. Add-on interest is calculated at the outset of a loan on the cash advance for the full term, as if the principal did not decline over the course of the loan. For example, a $1,000 loan with 12 monthly installments and an add-on interest amount of $8.00 per hundred per annum would have a total charge of interest of $80 and monthly payments of $90, yielding an annual percentage rate ("APR") of 14.45%.

(3) Amount Financed--The amount of money which is used, forborne, or detained and upon which interest is charged. The cash advance plus any other amounts that are financed by the creditor are included. Any points or other prepaid finance charges, excluding the administrative loan fee, that are not paid at closing and that are financed as part of the transaction are included in the amount financed. This definition is only applicable for the purposes of this subchapter for computing earnings, deferments, maximum charges, and determining refunds of unearned interest. It is not intended to be analogous with the similar term that is used in the Truth in Lending Act (15 U.S.C. §1601, et seq.).

(4) Authorized charge--Any charge authorized by applicable Texas law to be included in the credit transaction.

(5) Authorized lender--A person who has obtained a regulated loan license from the commissioner, or a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States. Banks, savings banks, and savings and loan associations chartered in other states insured by the Federal Deposit Insurance Corporation, and credit unions chartered in other states insured through the National Credit Union Share Insurance Fund are included in this term. Separate entities that are subsidiaries or affiliates of licensees or authorized banks, savings banks, savings and loan associations, or credit unions are not authorized lenders unless they meet the required elements of the definition of an authorized lender in their own right.

(6) Commissioner--The Consumer Credit Commissioner of the State of Texas.

(7) Date of consummation--The date of closing or execution of a loan contract.

(8) Default charge or late charge--The additional interest charge for late payment on a loan.

(9) Deferment charge--The payment of an additional interest charge to defer the payment date of a scheduled payment on a contract.

(10) Dual-interest coverage--Insurance that provides benefits to both the holder of a loan and the borrower in the event of a loss of the security covered by the policy. The policy contains a loss payable clause or endorsement that provides benefits that are payable at the discretion of the holder.

(11) Installment account handling charge (IAHC)--An interest charge authorized for making a loan under Texas Finance Code, §342.252 and §342.259.

(12) Installment loan--Any type of closed-end loan with multiple scheduled payments.

(13) Interest-bearing loan--A loan in which the borrower agrees to pay the principal and interest that accrues at a certain periodic rate.

(14) Interpretation letter--A formal interpretation of Texas Finance Code, Title 4 made by the commissioner and approved by the finance commission under Texas Finance Code, §14.108.

(15) Licensee--Any person who has been issued a regulated loan license pursuant to Texas Finance Code, Chapter 342. Another name for a "regulated loan license" is "consumer loan license."

(16) Making a loan--The act of making a loan is either the determination of the credit decision to provide the loan, or the act of funding the loan or transferring money from the lender to the borrower. A person whose name appears on the loan documents as the payee of the note is considered to have "made" the loan.

(17) Negotiating a loan--The process of submitting and considering offers between a borrower and a lender with the objective of reaching agreement on the terms of a loan. The act of passing information between the parties can, by itself, be considered "negotiation" if it was part of the process of reaching agreement on the terms of a loan. "Negotiation" involves acts which take place before an agreement to lend or funding of a loan actually occurs.

(18) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(19) Precomputed loan--A loan in which the borrower agrees to pay the total of payments that includes both principal and all anticipated interest through the full term of the loan. If a borrower prepays a precomputed loan, the borrower is entitled to a rebate of all unearned interest and unearned charges.

(20) Prepaid interest--Interest paid separately in cash or by check before or at consummation in a transaction, or withheld from the proceeds of the credit at any time. Some common terms such as points, discounts, and origination fees have been used to identify this charge.

(21) Principal--The capital sum of the debt including any interest capitalized and added to the cash advance at the inception of the loan. This is the amount of money which is used, forborne, or detained and upon which interest is charged. The principal amount does not include any interest accrued after the inception of the loan, such as default charges.

(22) Pro rata method--A formula for determining the amount of unearned interest or other charges, such as insurance, to be refunded following prepayment or acceleration by applying the amounts to equal unit periods. This formula assumes that interest or other charges are earned in direct proportion to the time that a loan has been outstanding.

(23) Rebate--A refund of all or part of a precomputed charge or interest.

(24) Regulated loan--A loan made under the authority of Texas Finance Code, Chapter 342.

(25) Renewal or refinance--A new loan contract that includes, in whole or in part, the net balance of one or more existing loan contracts.

(26) Simple annual rate--The interest rate under the loan agreement expressed as a percentage rate per year employing the U.S. rule method.

(27) Sum of the monthly balances or sum of the periodic balances method--Another formula for determining the amount of unearned interest or other charges to be refunded. This is a variant of the rule of 78s. It provides that the fraction of the contract interest to be rebated at any given time in the loan term is the sum of the monthly loan balances for the months remaining in the originally scheduled loan term divided by the sum of the monthly balances for all of the months in the scheduled loan term. For example, for a 6-month loan of $600 which is scheduled to be repaid in $100 monthly installments, the rebate fraction after two months would be: 400 + 300 + 200 + 100 divided by 600 + 500 + 400 + 300 + 200 + 100 = 1000/2100 = 10/21 = 0.476 (rounded). For any loan which is paid off in equal installments, the sum of the balances method and the rule of 78s will provide identical rebates. If, however, a loan schedule contains unequal payments and especially where the debt is retired by a final balloon payment, the rebates under the two formulas will be different.

(28) Term loan--A loan made repayable in a single payment.

(29) Transacting a loan--Any of the significant events associated with the lending process through funding, including the preparation, negotiation and execution of loan documents and the transfer of money by the lender to the borrower or to a third party on the borrower's behalf. This also includes the act of arranging a loan.

(30) United States rule--Ruling of United States Supreme Court in Story v. Livingston, 38 U.S. (13 Pet.) 359, 371 (1839) that, in partial payments on a debt, each payment is applied first to interest and any remainder reduces the principal. Under this rule, accrued but unpaid interest cannot be added to the principal and interest cannot be compounded.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. AUTHORIZED ACTIVITIES

7 TAC §§83.201 - 83.205

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 83, §§83.201 - 83.205, concerning Consumer Loans. The new rules contained in 7 TAC §§83.201 - 83.205 outline Subchapter B, concerning Authorized Activities. These new rules are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8940).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules being repealed, as found in 7 TAC, Subchapter A, §§1.103 - 1.107, concerning General Provisions. The commission's adopted repeal of Subchapter A is published elsewhere in this issue of the *Texas Register*.

The commission received one written comment on the proposal from Black, Mann & Graham, L.L.P. The comment will be addressed under the rules commented upon, §83.205.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the adopted new rules as a result of the agency's rule review of former Subchapter A under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to

formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule being repealed to the new rule being adopted are technical and nonsubstantive in nature.

Section 83.201 (former §1.103) provides for the responsibility of licensees for the acts of their agents.

Section 83.202 (former §1.104) requires that each officer, director, employee, and agent of a licensee have a working knowledge of the laws and regulations applicable to the licensee's business.

Section 83.203 (former §1.105) outlines transactions that are considered to constitute a "device, subterfuge, or pretense" under Texas Finance Code, §342.051, and attempted evasion of the applicability of 7 TAC Chapter 83.

Section 83.204 (former §1.106) defines particular terms applicable to licensees with multiple licenses, and also outlines situations in which multiple licenses are required.

Section 83.205 (former §1.107) outlines situations where licenses are required to conduct loans by mail, lists entities considered to be authorized lenders, and states that loans conducted via the Internet are considered to be loans by mail.

Section 83.205 has been revised to refer the reader to §83.204(b) for applicable definitions.

The commenter states that the proposed version of §83.205(c) regarding entities not required to hold a license to make loans by mail in Texas contains inconsistencies in relation to the definition of "authorized lender" as outlined by §83.102(5) as proposed. The commenter recommends that the commission revise the rule so that it will be more in harmony with Texas Finance Code, §342.051(c). The commission agrees with the commenter's suggestion and has revised §83.205(c) (as well as §83.102(5)) for this adoption, so that both regulations will be internally consistent and so that they will harmonize with the Texas Finance Code provision.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.201. Responsibility for Acts of Agents.

A licensee is responsible for the acts and omissions of its officers, directors, employees, and agents in the conduct of the licensee's business.

§83.202. Knowledge of Laws and Regulations Required.

Each officer, director, employee, and agent of a licensee shall have a working knowledge of Texas Finance Code, Chapter 342, its implementing regulations, and other pertinent state and federal statutes and regulations that apply to the licensee's business.

§83.203. Attempted Evasion of Applicability of Chapter.

A "device, subterfuge, or pretense to evade the application" of this chapter, as used in Texas Finance Code, §342.051(b) refers to any transaction:

(1) that in form may appear on its face to be something other than a loan, but in substance meets the definition of a loan as defined in Texas Finance Code, §301.002(a)(10); and

(2) in which more than 10% annual interest, in substance, is being contracted for, charged or received.

§83.204. Multiple Licenses.

(a) Definitions. The words "made," "negotiated," and "collected" as used in Texas Finance Code, §342.052(b) are to be construed as follows.

(1) Made or Make--Loans are "made" by the office or offices where either the credit decision is made or the cash advance is disbursed.

(2) Negotiated or Arranged; Negotiate or Arrange--Loans are "negotiated" or "arranged" in the office or offices that received any information preliminary to a credit decision on a prospective borrower or received the executed application, agreement, or other necessary loan documentation.

(3) Collected or Collect--Loans are "collected" in the office or offices from which attempts are made to collect past-due payments from the borrowers under a loan. The mere receipt and accounting of payments does not constitute "collection."

(b) Application. Any office making, negotiating, arranging, or collecting loans must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

§83.205. Loans by Mail.

(a) Definitions. The words "make," "negotiate," "arrange," and "collect" as used in Texas Finance Code, §342.053(b) are to be construed according to the definitions contained in §83.204(a) of this title (relating to Multiple Licenses).

(b) Application. Any office, wherever located, making, negotiating, arranging, or collecting loans by mail must be licensed. For example, if a lender receives and reviews loan applications at one office, makes the loan decision at another office, funds the loan at a third, and collects past-due payments from another, all of these offices involved in lending by mail must be licensed. On the other hand, an office that merely receives, records, accounts for, and processes payments need not be licensed.

(c) Authorized lenders. The following entities with offices located outside of Texas may make loans by mail to Texas residents and are considered to meet the definition of authorized lender as contained in §83.102 of this title (relating to Definitions):

(1) a person who has obtained a regulated loan license from the commissioner;

(2) a bank, savings bank, savings and loan association, or credit union doing business under the laws of this state, another state, or the United States;

(3) a bank, savings bank, or savings and loan association chartered in another state insured by the Federal Deposit Insurance Corporation; and

(4) a credit union chartered in another state insured through the National Credit Union Share Insurance Fund.

(d) Internet loans. For purposes of Texas Finance Code, §342.053(b), a loan made, negotiated, arranged, or collected by or through the Internet is considered a "loan by mail."

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

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Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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SUBCHAPTER C. APPLICATION PROCEDURES

7 TAC §§83.301 - 83.311

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 83, §§83.301 - 83.311, concerning Consumer Loans. The new rules contained in 7 TAC §§83.301 - 83.311 outline Subchapter C, concerning Application Procedures. These new rules are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8941).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules being repealed, as found in 7 TAC, Subchapter C, §§1.301 - 1.310, concerning Application Procedures. The commission's adopted repeal of Subchapter C is published elsewhere in this issue of the *Texas Register*.

The commission received no written comment on the proposal.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the adopted new rules as a result of the agency's rule review of former Subchapter C under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule being repealed to the new rule being adopted are technical and nonsubstantive in nature.

New 7 TAC §§83.301 - 83.311 set out detailed procedures related to applications for licenses under Texas Finance Code, Chapter 342. The revisions outlined below clarify and streamline some of the filing procedures. In addition, the acceptance of approved alternative formats or electronic submissions has been added throughout the rules to modernize the application process and provide licensees with more options when completing the application.

Section 83.301 (former §1.301) defines particular terms.

Section 83.301(2), the definition of "principal party" has been significantly revised. Subparagraph (A) under §83.301(2) has been clarified regarding the inclusion of spouses with community property interest, while more detailed descriptions related to the other entity types have been added in order to streamline the licensing process.

Section 83.302 (former §1.302) describes the procedure for filing a new application for a regulated loan license, including instructions regarding what information is necessary on the application and what information must be filed with the application.

Section 83.302 has been revised to conform to the agency's current practice and also to streamline the application process. The requirements for disclosure of owners and principal parties as well as the fingerprinting requirements have experienced considerable revisions. Clause (v) has been added to §83.302(1)(H) and specifically states that fingerprints must be submitted to the agency, regardless of whether an individual has previously submitted fingerprints to a different state agency, as statutory provisions require direct submission and prevent disclosure to others. Revisions have been made to the provisions requiring entity documents under §83.302(2)(D) in order to clarify when complete copies are required and when relevant portions of documents are acceptable.

Section 83.303 (former §1.303) describes the procedure for filing an application for transfer of a regulated loan license, including the filing requirements.

Section 83.303 has been revised, with appreciable additions to clarify the circumstances for each entity type and situation as to when a transfer will be required. Subsections (d) and (e) of former §1.303 have been combined and revised into §83.303(d) in order to provide a more cohesive explanation of the requirements when one party is seeking permission to operate under another party's license.

Section 83.304 (former §1.305) describes what action a licensee must take when it changes the proportion of ownership in, or the form of, the licensed entity, and lists the time frame within which the licensee must notify the commissioner.

Section 83.304(c) has been revised to clarify the circumstances as to when a change in proportionate ownership occurs, not requiring a transfer of license. In addition, a new procedure whereby licensees are to submit a notification of proportionate ownership change when the cumulative change in interest of a single entity or individual amounts to 5% or greater has been added to §83.304(c).

Section 83.305 (former §1.306(a)) requires each applicant to supplement its application upon request by the agency.

Note that former §1.306 has been separated into two distinct rules, in order to distinguish between situations where the agency requests information to supplement an application and where the applicant has a duty to supplement its application as a result of changed circumstances. (See §83.306 below.)

Section 83.306 (former §1.306(b)) requires each applicant, upon discovery of new or changed information, to supplement its application within 10 days of discovery of the new or changed information.

Section 83.307 (former §1.304) describes how an application for a regulated loan license is processed, including a description of when an application is complete, as well as an explanation of what may occur if an applicant fails to complete an application. In addition, this section describes the hearings process that occurs if the applicant contests the denial of its application.

Section 83.308 (former §1.307) describes the procedures for relocating a licensed office, relocating or transferring regulated transactions, deadlines for notification.

Since the proposal, a clarification has been added to §83.308 with the addition of subsection (c) addressing the relocation of transactions. For consistency purposes, this language has been added to §83.308 so that the rule will reflect current agency practice and align with the rule applicable to OCCC pawnshop licensees. Subsection (c) places into regulation the current requirement that licensees who are simply relocating or transferring regulated transactions from one licensed location to another must follow the notice requirements outlined by §83.308(b). The licensee must also provide a list of the transferred accounts if requested by the agency. Please note that minor changes have been made to subsection (b) and the rule's title in order to incorporate the addition of subsection (c).

Section 83.309 (former §1.308) describes how a licensee may change its license status, including changing a license from active to inactive status and activating an inactive license.

Subsections (c) and (d) have been added to §83.309 in order to clarify the procedures for a licensee to voluntarily surrender its license, resulting in cancellation, as well as when a license will expire. Note that the language formerly contained in §1.406 regarding submission of the license certificate upon surrender is being combined into adopted §83.309(c).

Section 83.310 (former §1.309) sets out the fees for new licenses, license transfers, fingerprint processing, license amendments, and license duplication. The rule also outlines the costs of hearings and how annual assessment fees are calculated.

Section 83.310(a)(2) has been revised reflecting the collection of assessment fees upfront with the application, so that licenses may be issued more quickly upon approval. Should a license not be approved, this assessment fee will be refunded.

Section 83.311 (former §1.310) states that, upon filing with the Office of Consumer Credit Commissioner, an application for a regulated loan license or a notice submitted by an applicant or licensee becomes a state record and public information subject to the Texas Public Information Act.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.301. Definitions.

Words and terms used in this chapter that are defined in Texas Finance Code, Chapter 342, have the same meanings as defined in Chapter 342. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Net assets--The total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets. Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption, and encumbered real or personal property to the extent of the encumbrance. Generally, assets are available for use if they are readily convertible to cash within 10 business days.

(2) Principal party--An adult individual with a substantial relationship to the proposed lending business of the applicant. The following individuals are considered to be principal parties:

(A) proprietors, including spouses with community property interest;

(B) general partners;

(C) officers of privately-held corporations, to include the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with Texas Finance Code, Chapter 342;

(D) directors of privately-held corporations;

(E) individuals associated with publicly-held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (D) of this section (as if the corporation was privately-held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by Texas Finance Code, Chapter 342. One of the persons designated shall be responsible for assembling and providing the information required on behalf of the applicant and shall sign the application for the applicant;

(F) voting members of a limited liability corporation; and

(G) trustees and executors;

(H) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§83.302. Filing of New Application.

An application for issuance of a new regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The application must include the appropriate fees and the following:

(1) Required information. All questions must be answered.

(A) Application for License.

(i) Location. A physical street address must be listed for the applicant's proposed lending address. A post office box or a mail box location at a private mail-receiving service generally may not be used. If the address has not yet been determined or if the application is for an inactive license, then the application must so indicate.

(ii) Responsible person. The person responsible for the day-to-day operations of applicant's proposed offices must be named.

(iii) Signature(s). Electronic signatures will be accepted in a manner approved by the commissioner.

(I) If the applicant is a proprietor, each owner must sign.

(II) If the applicant is a partnership, each general partner must sign.

(III) If the applicant is a corporation, an authorized officer must sign.

(IV) If the applicant is a limited liability company, an authorized member or manager must sign.

(V) If the applicant is a trust or estate, the trustee or executor, as appropriate, must sign.

(B) Disclosure of Owners and Principal Parties.

(i) Proprietorship. The applicant must disclose who owns and who is responsible for operating the business. All community property interest must also be disclosed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status must be provided.

(ii) General partnership. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that includes the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organization Code, §1.002, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be included that includes the names and titles of all meeting the definition of "managerial official," as contained in Texas Business Organization Code, §1.002, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning 5% or more of the partnership.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

(iv) Corporation. Each officer and director must be named. Each shareholder holding 5% or more of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(v) Limited liability company. Each "manager," "officer," and "member" owning 5% or more of the company, as those terms are defined in Texas Business Organization Code, §1.002, and each agent owning 5% or more of the company must be listed. If a member is a legal entity and not a natural person, a narrative or diagram must be included that describes each level of ownership of 5% or greater.

(vi) Trust or Estate. Each trustee or executor, as appropriate, must be listed.

(C) Application Questionnaire. All applicable questions must be answered. Questions requiring a "yes" answer must be accompanied by an explanatory statement and any appropriate documentation requested.

(D) Appointment of Statutory Agent and Consent to Service. The appointment of statutory agent and consent to service must be provided by each applicant. The statutory agent is the person or entity to whom any legal notice may be delivered. The agent must be a Texas resident and list an address for legal service. If the statutory agent is a natural person, the address must be a physical residential address. If the applicant is a corporation or a limited liability company, the statutory agent should be the registered agent on file with the Texas Secretary of State. If the statutory agent is not the same as the registered agent filed with the Texas Secretary of State, then the applicant must submit certified minutes appointing the new agent.

(E) Personal Affidavit. Each individual meeting the definition of "principal party" as defined in §83.301 of this title (relating to Definitions) or who is a person responsible for day-to-day operations must provide a personal affidavit. All requested information must be provided.

(F) Personal Questionnaire. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide a personal questionnaire Each question must be answered. If any question, except question 1, is answered "yes," an explanation must be provided.

(G) Employment History. Each individual meeting the definition of "principal party" as defined in §83.301 of this title or who is a person responsible for day-to-day operations must provide an employment history. Each principal party should provide a continuous 10-year history, with no gaps, accounting for time spent as a student, unemployed, or retired. The employment history must also include the individual's association with the entity applying for the license.

(H) Fingerprints.

(i) For all persons meeting the definition of "principal party" as defined in §83.301 of this title, a complete set of legible fingerprints must be provided. All fingerprints should be submitted in a format prescribed by the agency and approved by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(ii) For limited partnerships, if the Disclosure of Owners and Principal Parties under subparagraph (B)(iii)(I) of this paragraph does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals who have previously been licensed by the Office of Consumer Credit Commissioner and principal parties of entities currently licensed, fingerprints are not required.

(v) For individuals who have previously submitted fingerprints to another state agency (e.g. Texas Department of Savings and Mortgage Lending), fingerprints are still required to be submitted to the Office of Consumer Credit Commissioner, as per Texas Finance Code, §14.152. Fingerprints cannot be disclosed to others, except as authorized by Texas Government Code, §560.002, as amended.

(I) Financial Statement and Supporting Financial Information.

(i) General information. The financial statement must be dated no earlier than 60 days prior to the date of application. Applicants may also submit audited financial statements dated within one year prior to the application date in lieu of completing the Supporting Financial Information All financial statements must be certified as true, correct, and complete.

(ii) Sole proprietorships. Sole proprietors must complete all sections of the Personal Financial Statement and the Supporting Financial Information, or provide a personal financial statement that contains all of the same information requested by the Personal Financial Statement and the Supporting Financial Information. The Personal Financial Statement and Supporting Financial Information must be as of the same date.

(iii) Partnerships. A balance sheet for the partnership itself as well as each general partner must be submitted. In addition, the information requested in the Supporting Financial Information must be submitted for the partnership itself and each general partner. All of the balance sheets and Supporting Financial Information documents for the partnership and all general partners must be as of the same date.

(iv) Corporations and limited liability companies. Corporations and limited liability companies must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the corporation or limited liability company applicant should contain no personal financial information.

(v) Trusts and estates. Trusts and estates must file a balance sheet that complies with generally accepted accounting principles (GAAP). The information requested in the Supporting Financial Information must be submitted. The balance sheet and Supporting Financial Information must be as of the same date. Financial statements are generally not required of related parties, but may be required by the commissioner if the commissioner believes they are relevant. The financial information for the trust or estate applicant should contain no personal financial information.

(J) Assumed Name Certificates. For any applicant that does business under an "assumed name" as that term is defined in Texas Business & Commerce Code, §36.02(7), an Assumed Name Certificate must be filed as provided in this subsection.

(i) Unincorporated applicants. Unincorporated applicants using or planning to use an assumed name must file an assumed name certificate with the county clerk of the county where the proposed business is located in compliance with Texas Business & Commerce Code, §36.10, as amended. An applicant must provide a copy of the assumed name certificate that shows the filing stamp of the county clerk or, alternatively, a certified copy.

(ii) Incorporated applicants. Incorporated applicants using or planning to use an assumed name must file an assumed name certificate in compliance with Texas Business & Commerce Code, §36.11, as amended. Evidence of the filing bearing the filing stamp of the Texas Secretary of State must be submitted or, alternatively, a certified copy.

(2) Other required filings.

(A) Loan forms. The applicant must provide information regarding all loan forms it intends to use.

(i) Custom forms. If a custom loan form is to be prepared, a preliminary draft or proof that is complete as to format and content and which indicates the number and distribution of copies to be prepared for each transaction must be submitted.

(ii) Stock forms. If an applicant purchases or plans to purchase stock forms from a supplier, the applicant must include a statement that includes the supplier's name and address and a list identifying the forms to be used, including the revision date of the form, if any.

(B) Statement of Experience. Each applicant should provide a statement setting forth the details of the applicant's prior experience in the lending or credit granting business. If the applicant or its principal parties do not have significant experience in the same type of credit business as planned for the prospective licensee, the applicant must provide a written statement explaining the applicant's relevant business experience or education, why the commissioner should find that the applicant has the requisite experience, and how the applicant plans to obtain the necessary knowledge to operate lawfully and fairly.

(C) Business Operation Plan. Each applicant must provide a brief narrative to the application explaining the type of lending operation that is planned. This narrative should discuss each of the following topics:

(i) the source of customers;

(ii) the purpose(s) of loans;

(iii) the size of loans;

(iv) the source of working capital for planned operations;

(v) whether the applicant will only be arranging or negotiating loans for another lender or financing entity;

(vi) if the applicant will only be arranging or negotiating loans for another lender or financing entity, the lender must also provide:

(I) a list of the lenders for whom the applicant will be arranging or negotiating loans;

(II) whether the loans will be collected at the location where the loans are made; or

(III) if the loans will not be collected at the location where the loans are made, the identification of the person or firm that will be servicing the loans, including the location at which the loans will be serviced, and a detailed description of the process to be utilized in collections.

(D) Entity documents.

(i) Partnerships. A partnership applicant must submit a complete and executed copy of the partnership agreement. This copy must be signed and dated by all partners. If the applicant is a limited partnership or a limited liability partnership, provide evidence of filing with the Texas Secretary of State.

(ii) Corporations. A corporate applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of incorporation and any amendments;

(II) a copy of the relevant portions of the bylaws addressing the required number of directors and the required officer positions for the corporation;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(iii) Publicly-held corporations. In addition to the items required for corporations, a publicly-held corporation must file the most recent 10K or 10Q for the applicant or for the parent company.

(iv) Limited liability companies. A limited liability company applicant, domestic or foreign, must provide the following documents:

(I) a complete copy of the articles of organization;

(II) a copy of the relevant portions of the operating agreement or regulations addressing responsibility for operations;

(III) a copy of the minutes of corporate meetings that record the election of all current officers and directors as listed on the Disclosure of Owners and Principal Parties, or a certification from the secretary of the corporation identifying the current officers and directors as listed on the Disclosure of Owners and Principal Parties;

(IV) if the statutory agent is not the same as the registered agent filed with the Texas Secretary of State:

(-a-) a copy of the minutes of corporate meetings that record the election of the statutory agent; or

(-b-) a certification from the secretary of the corporation identifying the statutory agent; and

(V) a certificate of good standing from the Texas Comptroller of Public Accounts.

(v) Trusts. A copy of the relevant portions of the instrument that created the trust addressing management of the trust and operations of the applicant must be filed with the application.

(vi) Estates. A copy of the instrument establishing the estate must be filed with the application.

(vii) Foreign entities. In addition to the items required by this chapter, a foreign entity must provide:

(I) a certificate of authority to do business in Texas, if applicable; and

(II) a statement of where records of Texas loan transactions will be kept. If these records will be maintained at a location outside of Texas, the applicant must acknowledge responsibility for the travel costs associated with examinations in addition to the usual assessment fee or agree to make all the records available for examination in Texas.

(E) Bond. The commissioner may require a bond under Texas Finance Code, §342.102, when the commissioner finds that this would serve the public interest. When a bond is required, the commissioner shall give written notice to the applicant. Should a bond not be submitted within 40 calendar days of the date of the commissioner's notice, any pending application may be denied.

(3) Subsequent applications (branch offices). If the applicant is currently licensed and filing an application for a new office, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, and Disclosure of Owners and Principal Parties, and a new Financial Statement as provided in paragraph (1)(I) of this section. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the agency is current and valid.

§83.303. Transfer of License.

(a) Definition. As used in this chapter, a "transfer of ownership" does not include a change in proportionate ownership as defined in §83.304 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(1) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(2) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(3) any change in ownership of a licensed limited partnership interest:

(A) in which a limited partner owning 10% or more relinquishes that owner's entire interest;

(B) in which a new limited partner obtains an ownership interest of 10% or more;

(C) in which a general partner relinquishes that owner's entire interest; or

(D) in which a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(4) any change in ownership of a licensed corporation:

(A) in which a new stockholder obtains 10% or more of the outstanding voting stock in a privately-held corporation;

(B) in which an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately-held corporation;

(C) any purchase or acquisition of control of 51% or more of a company which is the parent or controlling stockholder of a licensed privately-held corporation; or

(D) any stock ownership changes that result in a change of control (i.e. 51% or more) for a licensed publicly-held corporation;

(5) any change in the membership interest of a licensed limited liability company:

(A) in which a new member obtains an ownership interest of 10% or more;

(B) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(C) in which a purchase or acquisition of control of 51% or more of any company which is the parent or controlling member of a licensed limited liability company occurs;

(6) any acquisition of a license by gift, devise, or descent; and

(7) any purchase or acquisition of control of a licensed entity whereby a substantial change in management or control of the business occurs, despite not fulfilling the requirements of subsection (a)(1) - (5) of this section, and the commissioner has reason to believe that proper regulation of the licensee dictates that a transfer must be processed.

(b) Approval of transfer. No regulated loan license may be sold, transferred or assigned without written approval of the commissioner.

(c) Filing requirements. An application for transfer of a regulated loan license must be submitted in a format prescribed by the commissioner at the date of filing and in accordance with the rules and instructions. The commissioner may accept the use of prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The application for transfer shall include the appropriate fees and the following:

(1) Required information. The information contained in the following must be submitted: Application for License, Application Questionnaire, Disclosure of Owners and Principal Parties, Appointment of Statutory Agent and Consent to Service, Personal Affidavit, Personal Questionnaire, Employment History, Fingerprints, and Financial Statement and Supporting Financial Information. The instructions in §83.302 of this title (relating to Filing of New Application) are applicable to these filings.

(2) Evidence of the transfer of ownership. Documentation evidencing the transfer of ownership must be filed with the application and should include one of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the stock purchase agreement or other evidence of acquisition if voting stock of a corporate licensee has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Other required filings. All other required filings of new license applicants pursuant to §83.302 of this title must be filed and completed by any applicant for transfer of a license. If the applicant is currently licensed and acquiring another location, the applicant must provide the information that is unique to the new location including the Application for License, Application Questionnaire, and Disclosure of Owners and Principal Parties, evidence of the transfer of ownership, and a new Financial Statement as provided in §83.302(1)(I) of this title. The responsible person at the new location must file a Personal Affidavit, Personal Questionnaire, and Employment History, if not previously filed. Other information required by this section need not be filed if the information on file with the agency is current and valid.

(d) Permission to operate. No business under the license shall be conducted by any transferee until the application has been received, all applicable fees have been paid, and a request for permission to operate has been approved. In order to be considered, a permission to operate must be in writing. Additionally, the transferor must grant the transferee the authority to operate under the transferor's license pending approval of the transferee's new license application. The transferor must accept full responsibility to any customer and to the agency for the licensed business for any acts of the transferee in connection with the operation of the lending business. The permission to operate must be submitted before the seller takes control of the licensed operation. The agreement shall set a definite period of time for the transferee to operate under the transferor's license. A request for permission to operate may be denied even if it contains all of the required information. Two companies may not simultaneously operate under a single license. If the agency grants a permission to operate, the transferor must cease operating under the authority of the license.

(e) Application filing deadline. Applications filed in connection with transfers of ownership may be filed in advance but must be filed no later than 10 calendar days following the actual transfer.

§83.304. Change in Form or Proportionate Ownership.

(a) Organizational form. When any licensee or parent of a licensee desires to change the organizational form of its business (e.g., from corporation to limited partnership), the licensee must advise the commissioner in writing of the change within 10 calendar days by filing the appropriate transfer application documents as provided in §83.303 of this title (relating to Transfer of License). In addition, the licensee shall submit a copy of the relevant portions of the organizational document for the new entity (e.g., articles of conversion and partnership agreement) addressing the ownership and management of the new entity.

(b) Merger. A merger of a licensee is a change of ownership that results in a new or different surviving entity and requires the filing of a transfer application pursuant to §83.303 of this title. A merger of the parent entity of a licensee that leads to the creation of a new entity or results in a different surviving parent entity requires a transfer application pursuant to §83.303 of this title. Mergers or transfers of other entities with a beneficial interest beyond the parent entity level only require notification within 10 calendar days.

(c) Proportionate ownership.

(1) A change in proportionate ownership that results in the exact same owners still owning the business, and does not meet the requirements described in paragraph (2) of this subsection, does not require a transfer. Such a proportionate change in ownership does not require the filing of a transfer application, but does require notification when the cumulative ownership change to a single entity or individual amounts to 5% or greater. No later than 10 calendar days following the actual change, the licensee is required to notify the commissioner in writing of the change in proportionate ownership. This section does not apply to a publicly-held corporation that has filed with the agency the most recent 10K or 10Q filing of the licensee or the publicly-held parent corporation, although a transfer application may be required under §83.303 of this title (relating to Transfer of License).

(2) A proportionate change in which an owner that previously held under 10% obtains an ownership interest of 10% or more, requires a transfer under §83.303 of this title.

§83.305. Amendments to Pending Application.

Upon request, each applicant shall provide information supplemental to that contained in the applicant's original application documents.

§83.306. Reportable Actions After Application.

Any action, fact, or information that would require a materially different answer than that given in the original license application and which relates to the qualifications for license, must be reported within 10 calendar days after the person has knowledge of the action, fact or information.

§83.307. Processing of Application.

(a) Initial review. A response to an application will ordinarily be made within 14 calendar days of receipt stating that the application is complete and accepted for filing or stating that the application is incomplete and specifying the information required for acceptance.

(b) Complete application. An application is complete when:

(1) it conforms to the rules and published instructions;

(2) all fees have been paid; and

(3) all requests for additional information have been satisfied.

(c) Failure to complete application. If a complete application has not been filed within 30 calendar days after notice of deficiency has been sent to the applicant, the application may be denied.

(d) Hearing. Whenever an application is denied, the affected applicant has 30 calendar days from the date the application was denied to request in writing a hearing to contest the denial. This hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and §9.1 et seq. of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), before an administrative law judge who will recommend a decision to the commissioner. The commissioner will then issue a final decision after review of the recommended decision.

(e) Denial. If an application has been denied, the assessment fee shall be refunded to the applicant. The investigation fee and the fingerprint processing fee in §83.310 of this title (relating to Fees) shall be forfeited.

(f) Processing time.

(1) A license application will ordinarily be approved or denied within a maximum of 60 calendar days after the date of filing of a completed application.

(2) When a hearing is requested following an initial license application denial, the hearing shall be held within 60 calendar days after a request for a hearing is made unless the parties agree to an extension of time. A final decision approving or denying the license application shall be made after receipt of the proposal for decision from the administrative law judge.

(3) Exceptions. More time may be taken where good cause exists, as defined by Texas Government Code, §2005.004, for exceeding the established time periods in paragraphs (1) and (2) of this subsection.

§83.308. Relocation.

(a) A licensee may move the licensed office from the licensed location to any other location by paying the appropriate fees and giving notice of intended relocation to the commissioner not less than 30 calendar days prior to the anticipated moving date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of relocation, a copy of the notice to debtors, and the applicable fee as outlined in §83.310 of this title (relating to Fees).

(b) Written notice of a relocation of an office, or of transactions as outlined in subsection (c) of this section, must be mailed to all debtors of record at least five calendar days prior to the date of relocation. Any licensee failing to give the required notice shall waive all default charges on payments coming due from the date of relocation to 15 calendar days subsequent to the mailing of notices to debtors. Notices shall identify the licensee, provide both old and new addresses, provide both old and new telephone numbers, and state the date relocation is effective. The notice to debtors can be waived or modified by the commissioner when it is in the public interest. A request for waiver or modification must be submitted in writing for approval. The commissioner may approve notification to debtors by signs in lieu of notification by mail, if in the commissioner's opinion, no debtors will be adversely affected.

(c) Relocation of regulated transactions. If the licensee is only relocating or transferring regulated transactions from one licensed location to another licensed location, the licensee must comply with subsection (b) of this section and provide, if requested, a list of regulated transactions relocated or transferred. This list of relocated or transferred regulated transactions shall include the loan number and the full name of the debtor.

§83.309. License Status.

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the new mailing address for this license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be filed on the Amendment to Regulated Loan License or an approved electronic submission as prescribed by the commissioner. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.310 of this title.

(c) Voluntary surrender of license. Subject to §83.406(b) of this title (relating to Effect of Revocation, Suspension, or Surrender of License), a licensee may voluntarily surrender a license by providing written notice of the cessation of operations, a request to surrender the license, and by submitting the license certificate. A voluntary surrender will result in cancellation of the license.

(d) Expiration. A license will expire on December 31 unless a fee is paid by the due date for license renewal. A licensee that pays the annual assessment fee will automatically be renewed even though a new license may not be issued.

§83.310. Fees.

(a) New licenses.

(1) Investigation fees. A $200 non-refundable investigation fee is assessed each time an application for a new license is filed.

(2) Assessment fees. An assessment fee of $430 per active license and $125 per inactive license is assessed each time an application for a new license is filed. This assessment fee will be refunded if the application is not approved.

(b) License transfers. An applicant must pay a $200 non-refundable investigation fee for the first license transfer and a $50 non-refundable investigation fee on each additional license transfer filed simultaneously.

(c) Fingerprint processing. The non-refundable fee to investigate each principal party's fingerprint record is $40 per individual.

(d) License amendments. A fee of $25 must be paid each time a licensee amends a license by rendering a license inactive, activating an inactive license, changing the assumed name of the licensee, or relocating an office.

(e) License duplicates. The fee for a license duplicate is $10.

(f) Costs of hearings. The commissioner may assess the costs of an administrative appeal pursuant to Texas Finance Code, §14.207 for a hearing afforded under §83.307(d) of this title (relating to Processing of Application), including the cost of the administrative law judge, the court reporter, and agency staff representing the agency at a hearing.

(g) Annual assessment fee.

(1) An annual assessment fee is required for each license consisting of:

(A) a fixed fee of $430; and

(B) a volume fee based upon the type of lending activity conducted and the volume of business of that consists of an amount that is the greater of:

(i) $0.03 per each $1,000 transacted for license holders whose regulated operations consist of negotiating or brokering transactions on behalf of others in accordance with the most recent annual report filing (Schedule E, Brokered Loans) required by Texas Finance Code, §342.559;

(ii) $0.03 per each $1,000 advanced for license holders whose regulated operations occur within Texas Finance Code, Chapter 342, Subchapter F, in accordance with the most recent annual report filing (Schedule D, Lines 2 and 3) required by Texas Finance Code, §342.559; or

(iii) $0.05 per each $1,000 made or acquired under Texas Finance Code, Chapter 342, except amounts made or acquired by license holders covered by clauses (i) or (ii) of this subparagraph, or Texas Finance Code, Chapter 346, in accordance with the most recent annual report filing (Schedule D, Lines 1, 4, 6 and 8) required by Texas Finance Code, §342.559.

(2) The annual assessment fee for an inactive license is $125.

(3) The maximum annual assessment fee for each licensed entity shall not average more than $1,000 per active licensed location.

§83.311. Applications and Notices as Public Records.

Once a license application or notice is filed with the OCCC, it becomes a "state record" under Texas Government Code, §441.180(11), and "public information" under Texas Government Code, §552.002. Under Texas Government Code, §441.190, §441.191 and §552.004, the original applications and notices must be preserved as "state records" and "public information" unless destroyed with the approval of the director and librarian of the State Archives and Library Commission under Texas Government Code, §441.187. Under Texas Government Code, §441.191, the OCCC may not return any original documents associated with a regulated loan license application or notice to the applicant or licensee. An individual may request copies of a state record under the authority of the Texas Public Information Act, Texas Government Code, Chapter 552.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606748

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

SUBCHAPTER D. LICENSE

7 TAC §§83.401 - 83.408

The Finance Commission of Texas (commission) adopts new 7 TAC, Chapter 83, §§83.401 - 83.408, concerning Consumer Loans. The new rules contained in 7 TAC §§83.401 - 83.408 outline Subchapter D, concerning License. These new rules are adopted with changes to the proposal published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8948).

These rules are being relocated and reorganized. The agency believes that the reorganization will benefit licensees in that these rules will be in a more logical location and order and will be easier to find. The new rules are substantially similar to the rules being repealed, as found in 7 TAC, Subchapter D, §§1.401 - 1.407, concerning License. The commission's adopted repeal of Subchapter D is published elsewhere in this issue of the *Texas Register*. The agency is also adopting new §83.404, concerning Effect of Criminal History Information on Applicants and Licensees; and new §83.405, concerning Crimes Directly Related to Fitness for License; Mitigating Factors.

The commission received no written comment on the proposal.

The following paragraphs regarding the purpose of each rule track the original purpose language used when each rule was originally adopted. These purposes still exist. Additional explanation is provided under sections where recent changes in language have been incorporated into the adopted new rules as a result of the agency's rule review of former Subchapter D under Title 7, Part 1, Chapter 1 of the Texas Administrative Code. The remaining changes throughout all sections consist of revisions to formatting, grammar, punctuation, spelling, and other technical corrections. If no additional explanation is provided other than the main purpose of the rule, then the only changes made from the prior version of a rule being repealed to the new rule being adopted are technical and nonsubstantive in nature.

Section 83.401 (former §1.401) discusses the authorized activities of licensed lenders operating multiple branches.

Section 83.402 (former §1.402) explains the requirement for displaying licenses.

Section 83.403 (former §1.403) describes the agency's procedure for providing delinquent notices to licensees who have failed to pay an annual assessment fee.

Section 83.404 (new rule) describes the effect of criminal history information on applicants and licensees. Subsection (a) explains the collection and consideration of criminal history information. Subsection (b) outlines the information that must be provided on arrests, charges, indictments, and convictions. As per Texas Occupations Code, §53.022, subsection (c) of the rule outlines the factors the agency will consider in determining whether a conviction relates to the occupation of being a regulated lender. Subsection (d) provides the effects of criminal convictions on applicants and licensees, including a list of crimes involving moral character.

Section 83.405 (new rule) is a companion rule to §83.404. Section 83.405 describes the crimes directly related to the fitness for holding a license, as well as mitigating factors that will be considered, as per Texas Occupations Code, §53.023.

Section 83.406 (former §1.404) details the effect of a license revocation, suspension, or surrender upon the authority to collect on existing contracts.

Subsection (b) has been added to §83.406 and states that a licensee may not surrender a license after the initiation of an administrative action without the written agreement of the agency.

Section 83.407 (former §1.405) prescribes the process for a new application after a former licensee has surrendered its license or had a license revoked.

Section 83.407 has been revised by deleting language referencing suspension of a license, as such suspended licensees not complying with suspension requirements will subsequently be revoked and fall into the revocation category. Language outlining the situation of application after surrender has been added. Additionally, §83.407 has been revised to reflect that former licensees in these situations must follow the procedures for filing a new application, as opposed to the former language in §1.405 which refers to only transfer application procedures being necessary.

Section 83.408 (former §1.407) provides the procedure for returning prior license certificates upon the reissuance of a license.

Section 83.408 has been revised, adding the requirement of a written statement if a licensee is unable to return its former certificate upon reissuance of a license.

These new sections are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 grants the commission the authority to adopt rules to enforce the consumer loan chapter.

The statutory provisions (as currently in effect) affected by the adoption are contained in Texas Finance Code, Chapter 342.

§83.401. Branch Networks.

For purposes of Texas Finance Code, §342.151(b), an authorized lender with multiple licensed offices is authorized to make, negotiate, arrange, and collect loans from any of its licensed locations. Any action relating to a single account may occur at different licensed locations as long as every action is made by a licensed branch operated by the same authorized lender.

§83.402. License Display.

Licenses must be prominently displayed in a licensee's office in a conspicuous location visible to the general public.

§83.403. Notice of Delinquency in Payment of Annual Assessment Fee.

For purposes of Texas Finance Code, §342.155, notice of delinquency in the payment of an annual assessment fee is given upon the mailing of the delinquency notice, enclosed in a postpaid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Postal Service.

§83.404. Effect of Criminal History Information on Applicants and Licensees.

(a) Criminal history information. Upon submission of an application for a license, a principal party to an applicant for a license is investigated by the commissioner. In submitting an application for a license, a principal party to an applicant for a license is required to provide fingerprint information to the commissioner. Fingerprint information is forwarded to the Texas Department of Public Safety and to the Federal Bureau of Investigation to obtain criminal history record information. The commissioner will continue to receive information on new criminal activity reported after the fingerprints have been processed. In the case of a new application or if the commissioner finds a fact or condition that existed or, had it existed the license would have been refused, the commissioner may use the criminal history record information obtained from law enforcement agencies or other criminal history information provided by the applicant or other sources to issue a denial or initiate an enforcement action. Criminal history information relates to the agency's assessment of good moral character and the information gathered is relevant to the licensing or enforcement action decision as described below.

(b) Information on arrests, charges, indictments, and convictions. In responding to the information requests in the application, all arrests, charges, indictments, and convictions shall be disclosed. The applicant must, to the extent possible, secure and provide to the commissioner reliable documents or testimony evidencing the information required to make a determination under subsection (d) of this section, including the recommendations of the prosecution, law enforcement, and correctional authorities. The applicant must also furnish proof in such form as may be required by the commissioner that the principal party of the applicant or licensee has maintained a record of steady employment, has supported the principal party's dependents, and has otherwise maintained a record of good conduct. At a minimum, the principal party must furnish proof that all outstanding court costs, supervision fees, fines, and restitution as may have been ordered have been paid. Failure to disclose arrests, charges, indictments, and convictions reflects negatively on an applicant's honesty and moral character.

(c) Factors in determining whether conviction relates to occupation of regulated lender. In determining whether a criminal offense directly relates to the duties and responsibilities of holding a license, the commissioner shall consider the following factors, as specified in Texas Occupations Code, §53.022:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the principal party previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(d) Effect of criminal conviction on applicant for or holder of license.

(1) Effect of criminal convictions involving moral character. The commissioner may deny an application for a license, or suspend or revoke a license, if the applicant or licensee has a principal party who has been convicted of any felony or of a crime involving moral character that is reasonably related to the applicant's or licensee's fitness to hold a license or to operate lawfully and fairly within Texas Finance Code, Chapter 342. For purposes of this section, the crimes listed below are considered to be crimes involving moral character:

(A) Fraud, misrepresentation, deception, or forgery;

(B) Breach of trust or other fiduciary duty;

(C) Dishonesty or theft;

(D) Assault;

(E) Violation of a statute governing lending of this or another state;

(F) Failure to file a required report with a governmental body, or filing a false report;

(G) Attempt, preparation, or conspiracy to commit one of the preceding crimes; or

(H) Attempt, preparation, or conspiracy to evade Texas Finance Code, Chapter 342 and its provisions.

(2) Effect of other criminal convictions. The commissioner may deny an application for a license, or revoke an existing license if a principal party of the license applicant or holder has been convicted of a crime that directly relates to the duties and responsibilities of a regulated lender who originates or obtains loans written under Texas Finance Code, Chapter 342. Adverse action by the commissioner in response to a crime specified in this section is subject to mitigating factors and rights of the applicant or licensee, as found in §83.405 of this title (relating to Crimes Directly Related to Fitness for License; Mitigating Factors).

§83.405. Crimes Directly Related to Fitness for License; Mitigating Factors.

(a) Crimes directly related to fitness for license. Originating or obtaining loans made under Texas Finance Code, Chapter 342 involves or may involve making representations to borrowers regarding the terms of the loan, maintaining loan accounts, repossessing property without a breach of the peace, maintaining goods that have been repossessed, collecting due amounts in a legal manner, and foreclosing on real property in compliance with state and federal law. Consequently, a crime involving the misrepresentation of costs or benefits of a product or service, the improper handling of money or property entrusted to the individual, a crime involving failure to file a governmental report or filing a false report, or a crime involving the use or threat of force against another person, is a crime directly related to the duties and responsibilities of a license holder and may be grounds for denial, suspension, or revocation.

(b) Mitigating factors. In determining whether a conviction for a crime renders an applicant or a licensee unfit to be a license holder, the commissioner shall consider, in addition to the factors listed in §83.404 of this title (relating to Effect of Criminal History Information on Applicants and Licensees), the following factors, as specified in Texas Occupations Code, §53.023:

(1) the extent and nature of the principal party's past criminal activity;

(2) the age of the principal party at the time of the commission of the crime;

(3) the time elapsed since the principal party's last criminal activity;

(4) the conduct and work activity of the principal party prior to and following the criminal activity;

(5) the principal party's rehabilitation or rehabilitative effort while incarcerated or after release, or following the criminal activity if no time served; and

(6) the principal party's current circumstances relating to the present fitness of the applicant or licensee holding a license, evidence of which may include letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the principal party, the sheriff or chief of police in the community where the principal party resides, and other persons in contact with the convicted principal party.

§83.406. Effect of Revocation, Suspension, or Surrender of License.

(a) Effect on existing contracts. Revocation, suspension, or surrender of a license does not affect a preexisting contract between a lender and a borrower, except that no more than 10% interest may be charged or received by the lender following the revocation, suspension, or surrender of its license. Alternatively, a lender whose license is revoked or suspended may transfer or sell its accounts to an authorized lender who may continue to charge or receive the contracted rate of interest within the authority of Texas Finance Code, §342.001, et seq.

(b) Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the agency.

§83.407. Application Process after Surrender or Revocation.

To obtain a license after surrender or revocation, the former licensee is required to file an application for a new license pursuant to the procedures set forth in §83.302 of this title (relating to Filing of New Application).

§83.408. License Reissuance.

In the event of reissuance of a license for any reason, the licensee shall return to the agency the license certificate that was held prior to the reissuance. Should the licensee be unable to return the license certificate to the agency, the licensee must provide a written statement to that effect, including the reason for inability to return it (e.g. lost, destroyed).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606749
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
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Proposal publication date: November 3, 2006
For further information, please call: (512) 936-7640

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 35. MULTIFAMILY HOUSING REVENUE BOND RULES

10 TAC §§35.1 - 35.10

The Texas Department of Housing and Community Affairs (the "Department") adopts the proposed repeal of §§35.1 - 35.10, concerning the Multifamily Housing Revenue Bond Rules, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7838). This repeal is adopted in order to implement changes that will effectively improve the 2007 Private Activity Bond Program and make administrative corrections.

THE DEPARTMENT RECEIVED NO PUBLIC COMMENT UPON PUBLICATION OF THE PROPOSED RULES IN THE *TEXAS REGISTER* AND RECEIVED NO COMMENTS AT THE PUBLIC HEARING HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE MULTIFAMILY HOUSING REVENUE BOND RULES.

This repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606778
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: January 7, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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10 TAC §§35.1 - 35.10

The Texas Department of Housing and Community Affairs (the Department) adopts new §§35.1 - 35.10, concerning the Multifamily Housing Revenue Bond Rules. Section 35.6 and §35.8 are adopted with changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7838). Sections 35.1 - 35.5, 35.7, 35.9, and 35.10 are adopted without changes and, therefore, will not be republished.

These sections are adopted in order to improve the operation of the program, respond to public input, and improve the consistency with other Department rules.

The scope of the public comment concerning the Multifamily Housing Revenue Bond Program pertains to the following sections:

SUMMARY OF COMMENTS RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE *TEXAS REGISTER* AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE MULTIFAMILY HOUSING REVENUE BOND RULES.

§35.6(d)(7)--Pre-Application Scoring Criteria--Proper Site Control--(1,15,16)

Comment: Texas Affiliation of Affordable Housing Providers, Texas Association of Local Housing Finance Agencies, and Capital Area Housing Finance Corporation: This year language has been added stating that, for Tax Exempt Bond Developments, site control must be valid for 150 days after the Application Acceptance Period or through the full reservation and allocation period, whichever is longer. Comment suggests that this period of site control is extremely difficult to achieve with a Rehabilitation project. Owners of tenanted developments are generally unwilling to contractually agree to keep their properties off the market for such a long period of time. Comment requests the deletion of the proposed insertion and return to the language of the 2006 QAP (3). Other comment objects to the current language in the QAP regarding the requirement for site control for bond deals because they feel that this additional requirement will be harmful to developers that have chosen good sites that are highly sought after and particularly damaging to developers attempting to close on acquisition/rehabilitation deals where site control is always an issue. Comment does not object to this same requirement in TDHCA's proposed Bond rules as they feel TDHCA should be allowed to dictate their own multi-family rules; just as the local HFCs want the ability to manage their individual programs (1,15,16).

Staff Response: Staff appreciates the input and recommends the following change to this language:

(7) Proper Site Control (as defined in §35.3(21) of this title) control through December 1, 2006 with option to extend through March 1, 2007 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting.

Board Response: Accepted staff's recommendation.

§35.6(f)(1)--Final Application--Public Notification Signage (1,15,16)

Comment: Texas Affiliation of Affordable Housing Providers, Texas Association of Local Housing Finance Agencies, and Capital Area Housing Finance Corporation: Comment asserts the need for flexibility in the time required for publishing the public hearing information. The federal requirement is fourteen (14) days prior to the public hearing; however, commenter agrees thirty (30) days prior to the hearing would allow the needed flexibility (1,15,16).

Staff Response: Staff concurs with the comment and recommends the following language:

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority, within thirty (30) days of the Department's receipt of Volumes I and II. The applicant must certify to the fact that the sign was installed within thirty (30) days of Volume I and II submission and the date, time and location of the Bond Public Hearing must be included on the sign at least thirty (30) days prior to the hearing date. The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign.

Board Response: Accepted staff's recommendation.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§35.6. Application Procedures, Evaluation and Approval.

(a) Application Costs, Costs of Issuance, Responsibility and Disclaimer. The Applicant shall pay all costs associated with the preparation and submission of the Application--including costs asso-

ciated with the publication and posting of required public notices--and all costs and expenses associated with the issuance of the Bonds, regardless of whether the Application is ultimately approved or whether Bonds are ultimately issued. At any stage during the Application process, the Applicant is solely responsible for determining whether to proceed with the Application, and the Department disclaims any and all responsibility and liability in this regard.

(b) Pre-application. An Applicant who requests financing from the Department for a Development shall submit a pre-application in a format prescribed by the Department. Within fourteen (14) days of the Department's receipt of the pre-application, the Department will be responsible for federal, state, and local community notifications of the proposed Development. Upon review of the pre-application, if the Development is determined to be ineligible for Bond financing by the Department, the Department will send a letter to the Applicant explaining the reason for the ineligibility. If the Development is determined to be eligible for Bond financing by the Department, the Department will score and rank the pre-application based on the Private Activity Bond Program Scoring Criteria as described in subsection (d) of this section. The Department will rank the pre-application with higher scores ranking higher within each priority defined by §1372.0321, Texas Government Code. All Priority 1 Applications will be ranked above all Priority 2 Applications which will be ranked above all Priority 3 Applications, regardless of score, reflecting a priority structure which gives consideration to the income levels of the tenants and the rent levels of the units consistent with §2306.359, Texas Government Code. This priority ranking will be used throughout the calendar year. In the event two or more Applications receive the same score, the Department will use, as a tie-breaking mechanism, a priority first for Applications involving rehabilitation; then if a tie still exists, the Application with the greatest number of points awarded for Quality and Amenities for the Development; then if a tie still exists, the Department will grant preference to the pre-application with the lower number of net rentable square feet per bond amount requested. Pre-Applications must meet the threshold requirements as stated in the Private Activity Bond Program Threshold Requirements as set out in subsection (c) of this section. After scoring and ranking, the Development and the proposed financing structure will be presented to the Department's Board for consideration of a resolution declaring the Department's initial intent to issue Bonds (the "inducement resolution") with respect to the Development. Approval of the inducement resolution does not guarantee final Board approval of the Bond Application. Department staff, for good cause, may recommend that the Board not approve an inducement resolution for an Application. After Board approval of the inducement resolution, the induced Applications will be submitted to the Texas Bond Review Board for its lottery, waiting list or carryforward processing in rank order. The Texas Bond Review Board will draw the number of lottery numbers that equates to the number of eligible Applications submitted by the Department for participation in lottery. The lottery numbers drawn will not equate to a specific Development. The Texas Bond Review Board will thereafter assign the lowest lottery number drawn to the highest ranked Application as previously determined by the Department. The Texas Bond Review Board will issue reservations of allocation for Applications submitted for the waiting list or carryforward in the order provided by the Department based on rank. The criteria by which a Development may be deemed to be eligible or ineligible are explained below in subsection (g) of this section, entitled Eligibility Criteria. The Private Activity Bond Program Scoring Criteria will be posted on the Department's website.

(c) Pre-Application Threshold Requirements.

(1) As the Department reviews the Application, the Department will use the following assumptions, even if not reflected by the Applicant in the Application. Prequalification Assumptions:

(A) Development Feasibility:

(i) Debt Coverage Ratio must be greater than or equal to 1.15;

(ii) Deferred Developer Fees are limited to 80% of Developer's Fees;

(iii) Contractor Fee, Overhead and General Requirements are limited to 14% of direct costs plus site work cost; and

(iv) Developer Fees cannot exceed 15% of the project's Total Eligible Basis.

(B) Construction Costs Per Unit Assumption. Costs not to exceed $75 per Unit for general population developments and $85 for elderly developments (Acquisition/Rehab developments are exempt from this requirement);

(C) Anticipated Interest Rate and Term. As stated in the preliminary financing commitment from the Application;

(D) Size of Units (Acquisition/Rehab developments are exempt from this requirement);

(i) One bedroom Unit must be greater than or equal to 650 square feet for family and 550 square feet for senior Units.

(ii) Two bedroom Unit must be greater that or equal to 900 square feet for family and 750 square feet for senior Units.

(iii) Three bedroom Unit must be greater than or equal to 1,000 square feet for family.

(iv) Four bedroom Unit must be greater than or equal to 1200 square feet for family.

(2) Appropriate Zoning. Evidence of appropriate zoning for the proposed use or evidence of application made and pending decision;

(3) Executed Site Control. Properly executed and escrow receipted site control through December 1, 2006 with option to extend through March 1, 2007 for lottery Applications or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting for waiting list and carryforward Applications. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting;

(4) Previous Participation and Authorization to Release Credit Information (located in the uniform application);

(5) Current Market Information (must support affordable rents);

(6) Completed current TDHCA Bond Pre-Application and application exhibits;

(7) Completed Multifamily Rental Worksheets;

(8) Certification of Local Elected Official request for neighborhood organization information and Public Notification Information (see application package);

(9) Relevant Development Information and Public Notification Information Form (see application package);

(10) Completed 2007 Bond Review Board Residential Rental Attachment;

(11) Signed letter of Responsibility for All Costs Incurred;

(12) Signed Mortgage Revenue Bond Program Certification Letter;

(13) Evidence of Paid Application Fees ($1,000 to TDHCA, $1,500 to Vinson and Elkins and $5,000 to Bond Review Board);

(14) Boundary Survey or Plat clearly identifying the location and boundaries of the subject property;

(15) Local Area map showing the location of the Property and Community Services/Amenities within a three (3) mile radius;

(16) Utility Allowance documented from the Appropriate Local Housing Authority;

(17) Organization Chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant with evidence of Entity Registration or Reservation with the Secretary of State; and

(18) Required Notification. Evidence of notifications shall include a copy of the exact letter and other materials that were sent to the individual or entity, a sworn affidavit stating that they made all the required notifications prior to the deadlines and a copy of the entire mailing list (including names and complete addresses) of all the recipients. Proof of notification must not be older than three months prior to the date of Application submission date. Notification must be sent to all the following individuals and entities (If the QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted reflect a notification process that is different from the process listed below, then the QAP and Rules will override the notification process listed below):

(A) State Senator and Representative that represents the community containing the development;

(B) Presiding Officer of the governing body of any municipality containing the development and all elected members of that body (Mayor, City Council members);

(C) Presiding Officer of the governing body of the county containing the development and all elected members of that body (County Judge and/or Commissioners);

(D) School District Superintendent of the school district containing the development;

(E) Presiding Officer of the School Board of Trustees of the school district containing the development; and

(F) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under clause (i) of this subparagraph must be made by the deadlines described in that clause. Evidence of notification must meet the requirements identified in clause (ii) of this subparagraph to all of the individuals and entities identified in clause (iii) of this subparagraph.

(i) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(I) No later than twenty-one (21) days prior to the date the Application is submitted, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-Application materials to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by seven (7) days prior to the Application submission, then the Applicant must certify to that fact with the "Pre-Application Notification Certification Form" provided in the Pre-Application materials.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(ii) No later than the date the Pre-Application is submitted, Notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt in the format required in the "Pre-Application Notification Template" provided in the Pre-Application materials. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application materials. It is strongly encouraged that Applicants retain proof of notifications in the event the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(I) Neighborhood Organizations on record with the city, state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State representative of the district containing the Development; and

(IX) State senator of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Private Activity Bonds and Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate; and

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur.

(d) Pre-Application Scoring Criteria.

(1) Construction Cost Per Unit includes: direct hard costs, site work, contractor profit, overhead, general requirements and contingency. Calculation will be hard costs per square foot of net rentable area. Must be greater than or equal to $85 per square foot (1 point) (Acquisition/Rehab will automatically receive (1 point)).

(2) Size of Units. Average size of all Units combined in the development must be greater than or equal to 950 square foot for family and must be greater than or equal to 750 square foot for elderly (5 points). (Acquisition/Rehab developments will automatically receive 5 points).

(3) Period of Guaranteed Affordability for Low Income Tenants. Add 10 years of affordability after the extended use period for a total affordability period of 40 years (1 point).

(4) Quality and Amenities Substitutions in amenities will be allowed as long as the overall score is not affected. Applications in which Developments provide specific qualities and amenities at no extra charge to the tenant will be awarded points as follows:

(A) Laundry Connections (2 points);

(B) Self-cleaning or continuous cleaning ovens (1 point);

(C) Microwave Ovens (in each Unit) (1 point);

(D) Refrigerator with icemaker (1 point);

(E) Laundry equipment (washer and dryers) for each Unit (3 points);

(F) Storage Room of approximately nine (9) square feet or greater (does not have to be in the unit but must be on the property) (1 point);

(G) Covered entries (1 point);

(H) Nine foot ceilings (1 point);

(I) Covered patios or covered balconies (1 point);

(J) Covered Parking (at least one per Unit) (3 points);

(K) Garages (equal to at least 35% of Units) (5 points);

(L) Ceiling Fans in all rooms except bathrooms and kitchens (light with ceiling fan in all bedrooms) (1 point);

(M) 75% or Greater Masonry (includes rock, stone, brick, stucco and cementious board product; excludes EIFS) (5 points);

(N) Thirty year architectural shingle roofing (1 point);

(O) Use of energy efficient alternative construction materials (structurally insulated panels) with wall insulation at a minimum of R-20 (3 points);

(P) R-15 Walls/R-30 Ceilings (rating of wall system) (3 points);

(Q) 14 SEER HVAC or evaporative coolers in dry climates for new construction or radiant barrier in the attic for the rehabilitation (3 points);

(R) Energy Star or equivalently rated kitchen appliances (2 points);

(S) One Children's Playscape Equipped for 5 to 12 years olds, or one Tot Lot--Only Family Developments Eligible (1 point);

(T) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each--Only Family Developments Eligible (2 points);

(U) Sport Court (Tennis, Basketball or Volleyball)--Only Family Developments Eligible (2 points);

(V) Enclosed sun porch or covered community porch/patio (2 points);

(W) BBQ Grills and Tables (at least one each per 50 Units) (1 point);

(X) Accessible walking path/jogging path separate from a sidewalk (1 point);

(Y) Full Perimeter Fencing (2 points);

(Z) Controlled access gate (1 point);

(AA) Equipped and functioning business center or equipped computer learning center with 1 computer and 1 fax machine for every 25 Units proposed in the Application, and 1 printer for every 2 computers (2 points);

(BB) Game Room or TV Lounge (2 points);

(CC) Furnished and staffed children's activity center--Only Family Developments Eligible (3 points);

(DD) Horseshoe pit, putting green or shuffleboard court (only qualified elderly developments) (1 point);

(EE) Furnished Fitness Center (2 points);

(FF) Library with an accessible sitting area (separate from the community room) (1 point);

(GG) Gazebo with sitting area (1 point);

(HH) Emergency 911 telephones accessible and available to tenants 24 hours a day (2 points);

(II) Covered Pavilion that includes barbeque grills and tables (2 points);

(JJ) Swimming pool (3 points);

(KK) Community laundry room (with at least one front leading washer (1 point);

(LL) Furnished Community room (1 point);

(MM) Service coordinator office in addition to leasing offices (1 point);

(NN) Senior Activity Room (Arts and Crafts, etc.)--Only Qualified Elderly Developments Eligible (2 points);

(OO) Health Screening Room (1 point);

(PP) Secured Entry (elevator buildings only)--(1 point);

(QQ) Community Dining Room with full or warming kitchen--Only Qualified Elderly Developments Eligible (3 points);

(5) Tenant Services (Tenant Services shall include only direct costs (tenant services contract amount, supplies for services, internet connections, initial cost of computer equipment, etc.). Indirect costs such as overhead and utility allocations may not be included);

(A) $10.00 per Unit per month (10 points);

(B) $7.00 per Unit per month (5 points);

(C) $4.00 per Unit per month (3 points).

(6) Zoning appropriate for the proposed use or no zoning required appropriate zoning for the intended use must be in place at the time of Application submission date, September 5, 2006 (Applications submitted for lottery) or the submission dates listed on the Department's website for Applications submitted for waiting list and carryforward, in order to receive points (5 points).

(7) Proper Site Control (as defined in §35.3(24) of this title control through December 1, 2006 with option to extend through March 1, 2007 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the application being presented to the TDHCA Board prior to the scheduled meeting. For Applications submitted for waiting list and carryforward all information must be correct at the time of the Application submission date, September 5, 2006 for Applications submitted for lottery or the submission dates listed on the Department's website for Applications submitted for waiting list or carryforward, in order to receive points (5 points).

(8) Development Support/Opposition Maximum net points of +24 to -24. Each letter will receive a maximum of +3 to -3. All letters received by 5:00 PM, September 29, 2006 for Applications submitted for lottery or fourteen (14) days prior to the date of the Board meeting at which the Application will be considered for Applications submitted for waiting list and carryforward will be used in scoring.

(A) Texas State Senator and Texas State Representative (maximum +3 to -3 points per official);

(B) Presiding officer of the governing body of any municipality containing the Development and the elected district member of the governing body of the municipality containing the Development (maximum +3 to -3 points per official);

(C) Presiding officer of the governing body of the county containing the Development and the elected district member of the governing body of the county containing the Development (if the site is not in a municipality, these points will be doubled) (maximum +3 to -3 points per official);

(D) Local School District Superintendent and Presiding Officer of the Board of Trustees for the School district containing the Development (maximum +3 to -3 points per official).

(9) Penalties for Missed Deadlines in the Previous Year's Bond and/or Tax Credit program year. This includes approved and used extensions (-1 point per missed deadline).

(10) Local Political Subdivision Development Funding Commitment that enables additional Units for the Very Low Income (CDBG, HOME or other funds through local political subdivisions) Must be greater than or equal to 2% of the bond amount requested and must provide at least 5% of the total Development Units at or below 30% AMFI or an additional 5% of the total Development Units if the Applicant has chosen category Priority 1B on the residential rental attachment (2 points).

(11) Proximity to Community Services/Amenities Community services/amenities within three (3) miles of the site. A map must be included with the Application showing a three (3) mile radius notating where the services/amenities are located (maximum 13 points)

(A) Full service grocery store or supermarket (1 point);

(B) Pharmacy (1 point);

(C) Convenience store/mini-market (1 point);

(D) Retail Facilities (Target, Wal-Mart, Home Depot, etc.) (1 point);

(E) Bank/Financial Institution (1 point);

(F) Restaurant (1 point);

(G) Indoor public recreation facilities (community center, civic center, YMCA) (1 point);

(H) Outdoor public recreation facilities (park, golf course, public swimming pool) (1 point);

(I) Fire/Police Station (1 point);

(J) Medical Facilities (hospitals, minor emergency, doctor or dentist offices) (1 point);

(K) Public Library (1 point);

(L) Public Transportation (1/2 mile from site) (1 point);

(M) Public School (only one school required for point and only eligible with general population developments) (1 point).

(12) Proximity to Negative Features adjacent to or within 300 feet of any part of the Development site boundaries. A map must be included with the application showing where the feature is located. Developer must provide a letter stating there are none of the negative features listed below within the stated area if that is correct. (maximum -20 points)

(A) Junkyards (5 points);

(B) Active Railways (excluding light rail) (5 points);

(C) Heavy industrial/manufacturing plants (5 points);

(D) Solid Waste/Sanitary Landfills (5 points);

(E) High Voltage Transmission Towers within 100 feet (5 points).

(13) Acquisition/Rehabilitation Developments will receive thirty (30) points. This will include the demolition of old buildings and new construction of the same number of units if allowed by local codes or less units to comply with local codes (not to exceed 252 total units).

(14) Preservation Developments will receive ten (10) points. This includes rehabilitation proposals on properties which are nearing expiration of an existing affordability requirement within

the next two years or for which the there has been a rent restriction requirement in the past ten years. Evidence must be provided.

(e) Financing Commitments. After approval by the Board of the inducement resolution, and before submission of a final application, the Applicant will be solely responsible for making appropriate arrangements with financial institutions which are to be involved with the issuance of the Bonds or the financing of the Development, and to begin the process of obtaining firm commitments for financing from each of the financial institutions involved.

(f) Final Application. An Applicant who elects to proceed with submitting a final Application to the Department must submit the Volumes I and II of the Application, for Priority 1 and 2, prior to receipt of a reservation of allocation from the Texas Bond Review Board. For Priority 3 Applications the Volumes I and II must be submitted within fourteen (14) days of the reservation date from the Texas Bond Review Board. The Volume III of the Application and such supporting material as is required by the Department must be submitted at least sixty (60) days prior to the scheduled meeting of the Board at which the Development and the Bond issuance are to be considered, unless the Department directs the Applicant otherwise in writing. If the Applicant is applying for other Department funding then refer to the Rules for that program for Application submission requirements. The final application must adhere to the Department's QAP and Rules in effect for the program year for which the Bond and Housing Tax Credit applications are submitted. The Department may determine that supporting materials listed in paragraphs (1) - (42) of this subsection shall be provided subsequent to the final Application deadline in accordance with a schedule approved by the Department. Failure to provide any supporting materials in accordance with the approved schedule may be grounds for terminating the Application and returning the reservation to the Texas Bond Review Board. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies within five business days will result in a penalty fee of $500 for each day the deficiency remains unresolved. Any Application with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of any fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid. The final application and supporting material shall consist of the following information:

(1) A Public Notification Sign shall be installed on the proposed Development site, regardless of Priority, within thirty (30) days of the Department's receipt of Volumes I and II. The applicant must certify to the fact that the sign was installed within thirty (30) days of Volume I and II submission and the date, time and location of the Bond Public Hearing must be included on the sign at least thirty (30) days prior to the hearing date. The sign must be at least four (4) feet by eight (8) feet in size and be located within twenty (20) feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day the TDHCA Board takes final action on the Application for the development. The information and lettering on the sign must meet the requirements identified in the Application. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's Option, mail written notification to all addresses located within the footage distance required by the local municipality zoning ordinance or 1,000 feet, if there is no local zoning ordinance or if the zoning ordinance does not require notification, of any part of the proposed Development site. This written notification must include the information otherwise required for the sign. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the 1,000 foot or local ordinance area showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. The Applicant must mail notice to any public official that changed from the submission of the pre-application to the submission of the final application and any neighborhood organization that is known and was not notified at the time of the pre-application submission. No additional notification is required unless the Applicant submitted a change in the Application that reflects a total Unit increase greater than 10%, an increase greater than 10% for any given AMFI, or a change in the population being served (elderly, general population or transitional);

(2) Completed Uniform Application and Multifamily Rental Worksheets in the format required by the Department;

(3) Certification of no changes from the pre-application to the final application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the application being placed below another application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points);

(4) Certification and agreement to comply with the Department's rules;

(5) A narrative description of the Development;

(6) A narrative description of the proposed financing;

(7) Firm letters of commitment from any lenders, credit providers, and equity providers involved in the transaction;

(8) Documentation of local Section 8 utility allowances;

(9) Site plan;

(10) Unit and building floor plans and elevations;

(11) Complete construction plans and specifications;

(12) General contractor's contract;

(13) Completion schedule;

(14) Copy of a recorded warranty deed if the Applicant already owns the Property, or a copy of an executed earnest money contract between the Applicant and the seller of the Property if the Property is to be purchased;

(15) A local map showing the location of the Property;

(16) Photographs of the Site;

(17) Survey with legal description;

(18) Flood plain map;

(19) Evidence of zoning appropriate for the proposed use from the appropriate local municipality that satisfies one of these subparagraphs (A) - (C) of this paragraph:

(A) written evidence that the local entity responsible for initial approval of zoning has approved the appropriate zoning and that they will recommend approval of the appropriate zoning to the entity responsible for final approval of zoning decisions;

(B) provide a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance;

(C) a letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating the Development is permitted under the provision of the zoning ordinance that apply to the location of the Development.

(20) Evidence of the availability of utilities;

(21) Copies of any deed restrictions which may encumber the Property;

(22) A Phase I Environmental Site Assessment performed in accordance with the Department's Environmental Site Assessment Rules and Guidelines (§1.35 of this title);

(23) Title search or title commitment;

(24) Current tax assessor's valuation or tax bill;

(25) For existing Developments, current insurance bills;

(26) For existing Developments, past two (2) fiscal year end development operating statements;

(27) For existing Developments, current rent rolls;

(28) For existing Developments, substantiation that income-based tenancy requirements will be met prior to closing;

(29) A market study performed in accordance with the Department's Market Analysis Rules and Guidelines (§1.33 of this title);

(30) Appraisal of the existing or proposed Development performed in accordance with the Department's Underwriting Rules and Guidelines (§1.32 of this title);

(31) Statement that the Development Owner will accept tenants with Section 8 or other government housing assistance;

(32) An organizational chart showing the structure of the Applicant and the ownership structure of any principals of the Applicant;

(33) Evidence that the Applicant and principals are registered with the Texas Secretary of State, as applicable;

(34) Organizational documents such as partnership agreements and articles of incorporation, as applicable, for the Applicant and its principals;

(35) Documentation of non-profit status if applicable;

(36) Evidence of good standing from the Comptroller of Public Accounts of the State of Texas for the Applicant and its principals;

(37) Corporate resumes and individual resumes of the Applicant and any principals;

(38) Latest two (2) annual financial/operating statements and current interim financial statement for the Applicant and its principals;

(39) Latest income tax filings for the Applicant and its principals;

(40) Resolutions or other documentation indicating that the transaction has been approved by the general partner;

(41) Resumes of the general contractor's and the property manager's experience; and

(42) Such other items deemed necessary by the Department per individual application.

(g) Eligibility Criteria. The Department will evaluate the Development for eligibility at the time of pre-application, and at the time of final Application. If there are changes to the Application that have an adverse affect on the score and ranking order and that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). The Development and the Applicant must satisfy the conditions set out in paragraphs (1) - (6) of this subsection in order for a Development to be considered eligible:

(1) The proposed Development must further meet the public purposes of the Department as identified in the Code.

(2) The proposed Development and the Applicant and its principals must satisfy the Department's Underwriting Rules and Guidelines (§1.32 of this title). The pre-application must include sufficient information for the Department to establish that the Underwriting Guidelines can be satisfied. The final Application will be thoroughly underwritten according to the Underwriting Rules and Guidelines (§1.32 of this title).

(3) The Development must not be located on a site determined to be unacceptable for the intended use by the Department.

(4) Any Development in which the Applicant or principals of the Applicant have an ownership interest must be found not to be in Material Non-Compliance under the compliance Rules in effect at the time of pre-application submission. Any corrective action documentation affecting the Material Non-compliance status score must be submitted to the Department no later than thirty (30) days prior to final application submission.

(5) Neither the Applicant nor any principals of the Applicant is, at the time of Application:

(A) barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or

(B) has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation, misappropriation of funds, or other similar criminal offenses within fifteen (15) years; or

(C) is subject to enforcement action under state or federal securities law, action by the NASD, subject to a federal tax lien, or the subject of an enforcement proceeding with any governmental entity; or

(D) neither applicant nor any principals of the applicant have a development under their ownership or control with a Material Non-compliance score as set out in the Department's Compliance Monitoring Policies and Procedures (Chapter 60 of this title); or

(E) otherwise disqualified or debarred from participation in any of the Department's programs.

(6) Neither the Applicant nor any of its principals may have provided any fraudulent information, knowingly false documentation or other intentional or negligent misrepresentation in the Application or other information submitted to the Department.

(h) Bond Documents. After receipt of the final Application, bond counsel for the Department shall draft Bond documents which conform to the state and federal laws and regulations which apply to the transaction.

(i) Public Hearings; Board Decisions. For every Bond issuance, the Department will hold a public hearing in accordance with §2306.0661, Texas Government Code and §147(f) of the Code, in order to receive comments from the public pertaining to the Development and the issuance of the Bonds. The Applicant or member of the Development team must be present and will be responsible for conducting a brief presentation on the proposed Development and providing handouts at the hearing that should contain at a minimum, a description of the Development, maximum rents and income restrictions. If the proposed Development is an acquisition/rehabilitation then the presentation should include the scope of work that will be done to the property. All handouts must be submitted to the Department for review at least two (2) days prior to the public hearing. Publication of all notices required for the public hearing shall be at the sole expense of the Applicant. The Board's decisions on approvals of proposed Developments will consider all relevant matters. Any topics or matters, alone or in combination, may or may not determine the Board's decision. The Department's Board will consider the following topics in relation to the approval of a proposed Development:

(1) The developer market study;

(2) The location;

(3) The compliance history of the developer;

(4) The financial feasibility;

(5) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(6) The Development's proximity to other low income Developments;

(7) The availability of adequate public facilities and services;

(8) The anticipated impact on local school districts;

(9) Zoning and other land use considerations;

(10) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(11) Other good cause as determined by the Board.

(j) Approval of the Bonds.

(1) Subject to the timely receipt and approval of commitments for financing, an acceptable evaluation for eligibility, the satisfactory negotiation of Bond documents, and the completion of a public hearing, the Board, upon presentation by the Department's staff, will consider the approval of the Bond issuance, final Bond documents and, in the instance of privately placed Bonds, the pricing of the Bonds. The process for appeals and grounds for appeals may be found under §1.7 and §1.8 of this title. The Department's conduit housing transactions will be processed in accordance with the Texas Bond Review Board rules 34 TAC Part 9, Chapter 181, Subchapter A and Chapter 1372, Texas Government Code. The Bond issuance must receive an approving opinion from the Department's bond counsel with respect to the legality and validity of the Bonds and the security therefore, and in the case of tax-exempt Bonds, with respect to the excludability from gross income for federal income tax purposes of interest on the Bonds.

(2) Alternative Dispute Resolution Policy. The Department encourages use of Alternative Dispute Resolution methods as outlined in §1.17 of this title.

(k) Local Permits. Prior to the closing of the Bonds, all necessary approvals, including building permits, from local municipalities, counties, or other jurisdictions with authority over the Development must have been obtained or evidence that the permits are obtainable subject only to payment of certain fees must be provided to the Department.

(l) Closing. If there are changes to the Application prior to closing that have an adverse affect on the score and ranking order that would have resulted in the Application being placed below another Application in the ranking, the Department will terminate the Application and return the reservation to the Texas Bond Review Board (with the exception of changes to deferred developer's fees and support or opposition points). Once all approvals have been obtained and Bond documents have been finalized to the respective parties' satisfaction, the Bond transaction will close. Any outstanding Housing Trust Fund Pre-Development loans for the proposed Development site must be paid in full at the time the bond transaction is closed. All Applicants are subject to §1.13 of this title. Upon satisfaction of all conditions precedent to closing, the Department will issue Bonds in exchange for payment thereof. The Department will then loan the proceeds of the Bonds to the Applicant and disbursements of the proceeds may begin.

§35.8. Fees.

(a) Application and Issuance Fees. The Applicant is required to submit, at the time of pre-application, the following fees: $1,000 (payable to TDHCA), $1,500 (payable to Vinson & Elkins, the Department's Bond Counsel) and $5,000 (payable to the Texas Bond Review Board (BRB)) These fees cover the costs of pre-application review and filing fees to the BRB. The Department shall set fees to be paid by the Applicant in order to cover the costs of pre-application review, Application and Development review, the Department's expenses in connection with providing financing for a Development, and as required by law. (§1372.006(a), Texas Government Code). At the time of full application the Applicant is required to submit a tax credit application fee of $30/unit and $10,000 for the bond application fee. At the closing of the bonds the following fees are required, an issuance fee equal to 50 basis points (0.005) of the issued bond amount, administration fee equal to 20 basis points (0.002) and a compliance fee equal to $40/unit.

(b) Annual Administration, Portfolio Management and Compliance, and Asset Management Fees. The Department shall set ongoing fees to be paid by Development Owners to cover the Department's costs of administering the Bonds, portfolio management and compliance with the program requirements applicable to each Development and asset management applicable requirements. The annual compliance fee is paid in advance and is equal to $40/unit beginning two years from the first payment date; the asset management fee is paid in advance and is equal to $25/unit beginning two years from the first payment date; both are adjusted annually for CPI. The annual administration fee is paid in arrears and is equal to 10 basis points (0.001) of the outstanding bond amount beginning three years from the closing date. These fees are paid for a minimum of thirty (30) years or as long as the bonds are out standing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606779
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 1. RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

16 TAC §25.174

The Public Utility Commission of Texas (commission) adopts new §25.174, relating to Competitive Renewable Energy Zones, with changes to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7209).

The new rule will implement Senate Bill 20, 79th Legislature, 1st Called Session (2005) (Senate Bill 20), which amended Public Utility Regulatory Act (PURA) §39.904, relating to the Goal for Renewable Energy. The new §25.174 will provide procedures for the establishment of Competitive Renewable Energy Zones (CREZs) and for starting the process of siting and constructing transmission to facilitate delivering to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in Texas. This new rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 31852 is assigned to this proceeding.

Comments were received from AEP Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively, AEP); Celanese, Limited (Celanese); CenterPoint Energy Houston Electric, LLC (CenterPoint); CPS Energy; Denton Municipal Electric (Denton); the Electric Reliability Council of Texas, Incorporated (ERCOT); FPL Energy LLC (FPL); Horizon Wind Energy, LLC (Horizon); State Representative David Swinford; Texas Parks and Wildlife Department (TPWD); Lower Colorado River Authority and LCRA Transmission Services Corporation (LCRA); Reliant Energy (Reliant); Shell WindEnergy, Incorporated (Shell); Southwest Power Pool, Incorporated (SPP); Texas Industrial Energy Consumers (TIEC); Texas Wind and Wildlife Alliance (TWWA); TXU Electric Delivery Company (TXU Delivery); TXU Generation Company, LP, TXU Energy Retail Company, LP, and TXU Portfolio Management Company, LP (collectively, TXU Competitive); West Texas Wind Energy Consortium; the Wind Coalition; and Xcel Energy Services, Incorporated (Xcel). Reply comments were received from AEP; Airtricity, Incorporated; ERCOT; Floydada Economic Development Corporation; Horizon; ITC Grid Development, LLC; King Ranch; TIEC; TXU Cities Steering Committee (Cities); TXU Delivery; Reliant; TXU Competitive; and the Wind Coalition. The commission also received letters from 242 individuals.

Most of the commission decisions effectuating a CREZ will occur in two types of orders. The first will be the order at the conclusion of a CREZ docket described in subsection (a) of the new rule. The second will be the certificate of convenience and necessity (CCN) order for transmission improvements related to the CREZ. To facilitate the discussion of the various issues raised in comments, the following narrative briefly describes how the commission envisions the CREZ process.

The CREZ Docket

In the CREZ docket, the commission will determine the zones. The evaluation will take into account the factors listed in PURA §39.904(g), including, but not limited to: sufficiency of renewable energy resources and land areas to develop generating capacity from renewable energy technologies; the level of financial commitment by generators for each potential CREZ; and the construction of transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies.

The commission may sever its consideration of potential zones into one or more separate dockets. Evaluating potential CREZs that would be connected to the Southwest Power Pool (SPP) may require a separate docket in order to ensure adequate time to address issues involving SPP's Open Access Transmission Tariff (OATT) as approved by the Federal Energy Regulatory Commission.

In assessing the level of financial commitment by generators, the commission will look at existing development, signed and pending interconnection agreements (IAs) for units not yet in service, fees paid by generators for interconnection studies, executed leasing agreements with landowners, voluntary letters of credit assuring the developer's intent to build in the CREZ, and other factors for which parties have provided evidence as indications of financial commitment.

A CREZ order will, among other things, identify a set of transmission improvements and the geographic zone where the commission intends for the renewable development to occur. Each new or upgraded line will be identified by voltage level, and by where the line will connect to the existing grid. Some of the transmission improvements may not be in close proximity to the intended development, and may serve purposes in addition to facilitating renewable energy development in the zone. The order will also include an estimate of the maximum generation capacity that the CREZ can accommodate once the improvements identified in the order are in service.

The CCN Docket

Not later than one year after the commission issues the CREZ order, the TSP or TSPs providing transmission service in or to a CREZ shall file applications for all required CCNs for transmission facilities identified in the CREZ order. However, after detailed study, the transmission utility may propose modifica-

tions to the parameters included in the CREZ order if its study reveals alternatives that would reduce costs or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate.

After the CCN application is filed, developers must post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of CREZ costs. The commission may reconsider the CREZ designation or take other appropriate action if a developer fails to meet this requirement.

Generator priority

If it determines that the aggregate level of renewable energy for a CREZ exceeds or will soon exceed the maximum level of renewable capacity specified in the CREZ order, the commission may open another docketed proceeding to limit interconnection and/or establish dispatch priorities, taking into account indicators of financial commitment provided by generators and other factors.

Comments on questions posed by the commission

1. *Financial commitments by generators.* Proposed subsection (b)(4)(A) allows generators to indicate interest in a potential CREZ by posting non-refundable deposits of different amounts at different stages. Are the amounts large enough to indicate a sufficient degree of commitment by a generator to assist the commission in designating CREZs and granting certificates of convenience and necessity for transmission lines related to CREZs? If not, how large should the requirement be?

The Wind Coalition and FPL said the amounts specified in the rule for the Progressive Financial Commitment (PFC)--$6,100 per MW of generating capacity over the three stages--were sufficient. The Wind Coalition said the deposits should serve two purposes: to provide the commission with some indication of interest that developers have in various candidate CREZ areas, and to ensure that wind power developers are committed to the development of their generation projects if the transmission is built. The group supported the distribution of the PFC commitments ($100 per MW during the CREZ proceeding, $2,000 per MW after the CREZ order, and $4,000 per MW after approval of the CCN applications), and said it would be significant enough to encourage developers to make the next level of commitment after the CCNs are granted, but before the decision to build the transmission is made. However, the group also called for the rule to contain a clear, defined standard for what would be regarded as a sufficient degree of financial commitment.

TXU Competitive, however, said that $6,100 per MW was not a sufficient level of financial commitment. They proposed that the commission set a higher amount and, if the generator seeks long-term congestion revenue rights (CRRs), require the amount as a one-time payment. TXU Competitive also said the rule is too vague with regard to the specific financial commitments expected, because except for the PFC option, there was no per-MW deposit amount specified. LCRA did not comment on any specific level of requirement, but said the amount needs to be high enough to constitute a material amount of "sunk cost" should generators decide not to proceed.

Horizon proposed that the financial commitment be no less than a $25,000 cash deposit per MW of projected installed capacity at the proposed wind facility, all to be made during the CREZ proceeding. The first $150,000 of each deposit would be refundable only if the commission determined that the area would not be a CREZ, the zone were designated a CREZ but later deemed to be not viable by the commission, or the developer encountered an unanticipated problem with the development such as a regulatory or environmental issue that materially impacts the economic benefits associated with the particular wind development. Horizon argued that any deposit should be substantial enough to demonstrate that the parties proposing to build the project have the capability to do so and are committed to making a given project happen. In its reply comments, Cities said the financial commitment should be at least as large as the amount proposed by Horizon, and agreed that the deposits should be applied towards transmission studies related to the specific challenges of integrating a large quantity of wind generation into the ERCOT system, quantification of environmental and rural economic benefits, and deliberative polls.

Shell agreed with the $25,000 per MW standard proposed by Horizon, but said the first $250,000 should be used to compensate ERCOT for transmission studies and any remainder should be given to TPWD. The cash deposit would be non-refundable unless the commission determines that an area will not be a CREZ, the commission determines a CREZ is no longer viable, or there is an unanticipated problem with the development such as a regulatory or environmental issue that impacts the economic benefits or feasibility of the proposed development. Shell also proposed a "fast track" priority in designating a CREZ when developers committed more than $50 million for a particular area.

Cities agreed with TXU Competitive and other parties that the level of non-refundable deposits proposed under the new rule was not large enough to indicate a sufficient degree of commitment by renewable generation developers. Cities said their primary concern is that if generators fail to honor their development commitments, the transmission project would no longer be necessary but ratepayers would still have to pay for the construction and administrative costs incurred by ERCOT and other parties who planned and built the new transmission facilities.

TIEC said neither of the mechanisms included in the proposed rule was adequate, and instead proposed an auction in which developers would offer cash deposits to reserve a certain amount of capacity on the expanded transmission for the CREZ. TXU Competitive also raised concerns with both the PFC approach and the CRR approach, saying the subsection overall was vague with regard to the financial commitments expected from renewable resources. It said the PFC approach increased cancellation risk, which is the sort of uncertainty the CREZ paradigm was designed to avoid.

TIEC also said any money advanced by a generator to demonstrate financial commitment should be used to lower the amount of money that consumers have to pay for transmission, a position Cities supported in its reply comments. The Wind Coalition disagreed, however, and said applying generator deposits to transmission costs as proposed by TIEC was participant funding and not authorized by the Legislature. TXU Delivery said in its reply comments that participant funding had not been sufficiently vetted in this rulemaking to be included in the final rule.

Xcel said it was not clear how the provisions of proposed subsection (b)(4) would apply outside of ERCOT in parts of Texas served by SPP. Xcel noted that interconnection in the SPP is based on the FERC Large Generator Interconnection Procedures that currently have no mechanism for managing nonrefundable deposits for the purpose of establishing a placeholder for developing a CREZ, nor does the rule place SPP in an oversight or administrator role like it does for ERCOT. Xcel recommended that the rule exempt non-ERCOT portions of Texas from

this provision or apply some alternative mechanism that was consistent with FERC rules.

AEP supported the PFC process, saying it should require a high financial commitment from renewable generators. The deposit amounts should be demonstrative of the cost effectiveness of the transmission construction and should bear a reasonable relation to the transmission infrastructure investment, the company said.

The PFC mechanism along with the CRR escrow mechanism included in the proposed rule were both intended as means of demonstrating financial interest in the absence of IAs in ERCOT. In recent months, however, wind developers have executed IAs for about 1,560 MW of new wind capacity in ERCOT, dispersed across an area from Far West Texas to Central Texas, and from the southern Panhandle to Abilene. In the SPP region, developers have IAs for nearly 1,000 MW of wind power in the northern and western Panhandle, with another 2,100 MW under study. Another 15,400 MW is in the interconnection study queue at ERCOT. The number of IAs and the associated megawatts of renewable generation to date in ERCOT and in the SPP area persuade the commission that a complicated new mechanism to evaluate financial commitment by generators is not necessary.

The commission notes the concerns raised by TXU Competitive with respect to the risk of project cancellation and agrees that such risk should not be taken needlessly. Cancellation risk is reduced when developers have posted significant security deposits as required for IAs, and if such deposits exist, further demonstration of financial commitment is unnecessary. The commission incorporates a simplified version of the PFC, as an optional measure for a developer to demonstrate commitment. The commission will give appropriate weight to all available indicators based on the facts before it in the contested case(s).

The commission finds it appropriate to establish a subsequent financial commitment 45 days after the CCN application is filed. The $25,000 per MW level proposed by Horizon and Shell is too onerous for smaller developers, however. The commission finds that a more reasonable level is 10% of the developer's pro rata share of CREZ capital costs and CCN preparation costs, and revises the proposed rule accordingly. The commission may reconsider a CREZ designation, or take other measures it deems appropriate and consistent with statute, if a developer fails to meet this obligation.

The commission disagrees with the Wind Coalition, TIEC and others with respect to how deposits, which may consist of cash, a letter of credit or other collateral, are used. The commission finds it reasonable to treat these deposits similar to IA security: they would be held by the transmission utility, and refundable except for amounts used to compensate the transmission utility for expenses incurred in the event the developer defaults. The commission accordingly changes language from the proposed rule to reflect this purpose.

2. *Prioritization of dispatch.* Proposed subsection (b)(4) provides for assigning dispatch priority to renewable generators located in a CREZ if they fulfill all financial requirements arising from that paragraph. Please explain why this provision is better or worse than subsection (b)(3), which uses deposits reserved for the future purchase of CRRs. In particular, please comment on each alternative's consistency with PURA Chapter 35 and ERCOT protocols.

Most comments on this question addressed two issues: the technical feasibility of priority dispatch, and whether it was legally permissible under PURA. ERCOT noted that different generators in a CREZ would probably have different shift factors--*i.e.*, different degrees of impact on a given transmission bottleneck--depending on each unit's location. (For example, a unit farther from the congested line would have less impact than a unit that was closer, so that a 10 MW reduction at the closer unit may have the same effect on congestion as a 20 MW reduction at the farther unit.) ERCOT noted that if the real-time dispatch did not select the units with the best shift factors, the cost of energy dispatched in real-time could be more expensive.

ERCOT also pointed out that real-time energy deployments are determined for everywhere in the power region at the same time. Therefore, units inside a CREZ would be competing for dispatch not only with other units inside the CREZ, but with all units throughout the ERCOT power region. Dispatch prioritization procedures would need to address this aspect as well.

The Wind Coalition proposed a prioritization method that, it argued, addressed the issues raised by ERCOT and would be easy to implement. It would involve two runs of the security-constrained economic dispatch (SCED) software engine that will be used to price energy and deploy generation units in the ERCOT nodal market. The first run would weight the deployment of priority renewable resources vis-à-vis renewable resources without priority, and would be used to determine the output level for renewable resources. Prices, along with dispatch levels for all other resources, would be determined in the next run.

FPL, Horizon and Shell all supported priority dispatch. FPL noted that CRRs do not capture the value of lost RECs and tax credits, only the loss of energy revenues in the event of congestion-related curtailment. Shell said that while CRRs can evaluate level of commitment, CRRs cannot demonstrate their value as an investment.

CPS Energy, on the other hand, urged the commission to reject priority dispatch. Any priority created administratively and not determined by the market and the laws of physics, CPS Energy said, would be inherently inefficient and would significantly interfere with efficient market outcomes. CPS Energy also said that an administrative "dispatch priority" would be highly inconsistent with the nodal market design and would require significant modifications to ERCOT software.

LCRA said that while other aspects of the PFC described in subsection (b)(4) are reasonable, prioritized physical dispatch is contrary to commission rules regarding congestion rights. LCRA supported specialized treatment of CRRs, as is currently being done with respect to the McCamey area, as an alternative to priority dispatch. LCRA said CRRs are already in the market, while prioritized physical dispatch is not defined in the proposed rule. LCRA said neither the current zonal market nor the future nodal market is designed to accommodate prioritized physical dispatch. If there was any congestion limiting export from the CREZ, LCRA said, resources outside the CREZ may be required to curtail significant amounts of output in order to maintain the dispatch priority of a single MW within the CREZ. LCRA said that this outcome is neither desirable from a societal point of view nor desirable to the resources with dispatch priority because congestion charges paid by the priority resource would likely be very high. LCRA said that if, on the other hand, flowgate rights were allocated, the resources within the CREZ that are allocated the flowgate rights would be hedged against congestion charges and could make the economic decision of reducing their output to benefit from flowgate payments when congestion costs are high or operating at their desired dispatch level and forgoing those profits.

AEP said neither process (CRRs nor dispatch priority) would adversely affect a renewable generator's right to transmission service. However, AEP said that the rule is too general in describing CRRs and there is no explanation of how CRRs would be valued. The company also said the rule failed to define "dispatch priority" and therefore could not compare the relative merits of CRRs versus priority dispatch. In its reply comments, however, AEP said significant issues arise in the rule because current ERCOT protocols and future nodal market design do not provide for prioritized dispatch.

TXU Competitive said dispatch priority is not consistent with current or future ERCOT market design. TXU Competitive said that in the nodal market design, wind generating units will be dispatched at maximum output whenever possible because of their lower operating costs; therefore wind generation will inherently have dispatch priority over other generation types. TXU Competitive urged the commission to standardize the means by which renewable resources will demonstrate financial commitment and allow them to obtain CRRs for new transmission in CREZ. They said the current rule language is vague in regard to the level and type of financial commitment and to the type and lifespan of CRRs.

TIEC said that proposed §25.174(b)(4), which includes the dispatch priority provisions, does not adequately capture the financial commitment test required by PURA. On the other hand, TIEC added, allowing the purchase of CRRs under the mechanism in §25.174(b)(3) does not demonstrate true financial commitment either. TIEC reiterated that regardless of the approach used, customers should not be left to bear the entirety of the costs associated with building CREZ facilities. Moreover, TIEC noted that both alternatives raise questions with respect to the requirement in PURA that "The Commission shall ensure that an electric utility or transmission and distribution utility provides nondiscriminatory access to wholesale transmission service..." (PURA §35.004(b)). The group also said it did not believe the Legislature intended for a CREZ to be developed exclusively for renewable generation.

Cities said it agreed with the comments of TIEC, CPS, LCRA, TXU, and others that the new rule should not establish artificial dispatch priorities that unduly favor renewable generation projects, adding that such treatment would be neither necessary nor consistent with ERCOT market design principals and transmission open access regulations. Cities agreed with TXU Competitive, pointing out that the very low variable operating costs of most renewable energy projects will dictate that such projects will be dispatched when available. Cities said they believe that there are already significant incentives in place to encourage the development of renewable energy projects through other provisions of the CREZ rule and through the renewable energy targets mandated under §25.173 of this title (relating to the Goal for Renewable Energy). Given these existing incentives and the potential for related market inefficiencies and transmission access conflicts, Cities urged the commission to remove the proposed dispatch priority rights for renewable generators from the new CREZ rule.

TXU Delivery, in its reply comments, noted the opposition to and reasoning against dispatch priority. Agreeing that priority dispatch would not be consistent with current and future market design, TXU Delivery said a prioritized dispatch could also limit ERCOT's ability to adjust generation in response to system reliability issues. TXU Delivery recommended that the commission carefully consider the operational issues associated with the development and administration of dispatch priority and the departure that this rule might make from established market structure and operation.

The commission notes that main argument in favor of priority dispatch for renewable resources in a CREZ is to prevent the "piling on" phenomenon seen in McCamey and discussed by the Wind Coalition. Physical priority dispatch is not the only means of addressing this problem, however. Development in excess of a given threshold can be deterred through financial means as well as physical means. The commission agrees with FPL that PURA gives the commission latitude with respect to setting the terms and conditions of interconnection in ERCOT. The commission finds, however, that the solution to overbuilding in a CREZ is best left to a separate proceeding to be initiated after it has been determined that the maximum level of renewable capacity specified in the CREZ order for a zone has been or may soon be exceeded.

The commission agrees that the two-pass SCED method proposed by the Wind Coalition would be feasible technically. The commission concludes, however, that the details required to implement this or any other systematic prioritization scheme for the ERCOT power region should be worked out among stakeholders in the ERCOT protocol revision process. The commission therefore declines to adopt such a mechanism in this rule.

3. *Timeliness of completing upgrades.* Proposed subsection (a)(5)(E) provides that in its final CREZ order, the commission may impose reporting requirements and other measures to ensure timely completion of CCN applications and construction upgrades. What specific measures would be appropriate for the commission to consider in a final order, and should they be specified in this rule?

AEP, CenterPoint, TXU Competitive, TXU Delivery, and Cities stated that the commission should utilize the existing transmission construction reports and monthly construction progress reports. TXU Delivery further suggested that the commission could, if it deemed necessary during a CREZ designation proceeding, include provisions in its order that would result in a status update on the preparation of a CCN application or other related matters.

The Wind Coalition stated that the rule should specify that the existing construction report is to be filed for all CREZ transmission construction, regardless of whether the reporting rule by its terms was applicable.

The commission agrees that the existing reporting requirements may be sufficient to keep the ordered transmission upgrades moving in a timely manner. Nevertheless, it retains and clarifies language in the proposed rule giving the commission the flexibility to order additional reporting requirements if it deems them useful.

FPL stated that the commission should prepare a detailed procedural schedule in which certain milestones are set forth and should identify the entity or entities that will be responsible for ensuring the milestone deadlines and other reporting requirements are met.

TXU Delivery stated in its reply comments that FPL's recommendations were inconsistent with the manner in which PURA and the commission's rules require transmission facilities to be certificated. TXU Delivery further stated that the commission should not attempt to establish deadlines and reporting that will operate

to restrict and inhibit a utility's ability to complete the application as desired.

LCRA proposed two possible milestones for reporting progress on CCN applications. The first milestone would be the completion of preliminary routing and the research necessary to identify the landowners along the preliminary routes; a second milestone would be the open houses or public meetings.

In its initial comments, AEP stated that it is not necessary to include language in the final order to encourage the constructing utility to meet the estimated schedule. In its reply comments, however, AEP stated that it is not necessarily opposed to imposition of milestones, as suggested by LCRA and FPL, to monitor progress towards the completion of activities such as preliminary routing analysis, affected landowner identification, and public hearings/open houses.

AEP also stated in its reply comments that there are numerous other circumstances beyond the utility's control that impact a project schedule such as weather delays, material shortages, construction labor shortages, environmental construction limitations (*i.e.*, bird nesting season, required bird count, etc.), historical artifact workarounds, delays obtaining easements, and other land use issues.

The Wind Coalition stated, and Horizon and Shell agreed, that the main issue is to ensure that transmission utilities are given clear authority to prudently plan and prepare for CREZ related transmission improvements with confidence that prudent expenditures will be included in the rate base even if the transmission projects are altered or not completed as additional information is received. The Wind Coalition further suggested that the commission should identify a target in-service date in the CREZ designation order that may be taken into account in a general rate case to facilitate reporting of progress, and that the commission should require an oral update from the project manager every six months in a commission open meeting.

TXU Delivery replied that Wind Coalition's incentive for timely completion of transmission lines is entirely too vague to provide any utility with reasonable assurance of any manner of incentive regarding potential preferential treatment during a future rate proceeding. TXU Delivery explained that the issue of performance-based ratemaking is a significant issue of far-reaching policy implications that should not be introduced in this state through vague principles of limited and questionable application.

TXU Delivery further stated that the Wind Coalition's recommendation does not appear to be a reasonable utilization of limited utility and consultant resources. There are a number of facets of CREZ transmission facilities that will need to be established during the CREZ designation process which include voltage, number of circuits, capacity, and end points--all of which can significantly influence CCN application preparation.

The commission finds that setting a targeted in-service date for CREZ transmission as suggested by the Wind Coalition is reasonable, but that the timeline should be determined in the CREZ docket rather than by rule. The commission declines to prescribe penalties in the rule that would punish the TSP if the target were met. The need and form of such measures are more appropriately decided in a contested proceeding other than the CREZ docket.

Xcel stated and AEP agreed that the commission should establish a policy that provides incentive for the timely completion of applications for CCNs and construction upgrades, as opposed to imposing burdensome reporting requirements or punitive measures. Inclusion of construction work in progress (CWIP) in the rate base for transmission investment as authorized in PURA §39.203(3) for ERCOT utilities should be allowed for all new transmission investment built primarily to accommodate CREZ activity.

The Wind Coalition replied that it is generally supportive of further methods of assured utility cost recovery from ratepayers that will facilitate expedited building of new transmission for CREZs.

Reliant encourages as much disclosure on project status as prudently possible.

PURA already exempts transmission ordered as a result of CREZ designation from having to prove that it is used and useful. The commission does not believe that further special treatment, such as mandatory use of CWIP, is necessary.

4. *Length of process.* The proposed rule establishes deadlines for a final CREZ order, and for utilities to file a CCN application. Please identify steps in the CREZ process that can be shortened or consolidated.

FPL, West Texas Wind Energy Consortium, and 242 individual commenters suggested that the commission designate certain CREZs in this rule. FPL went on to explain that the commission has the authority to designate the CREZs in this rule and that all of the elements needed for the commission to fulfill the requirements in the proposed rule for a final order designating a CREZ will already be developed for most areas of the state with existing renewable energy facilities by the time a rule is adopted. FPL also noted that if the commission fails to designate a single CREZ until sometime in 2007, it is unlikely to influence the current PTC-development cycle decisions of wind energy generators in favor of Texas sites.

FPL asserted that the expedited rulemaking would address the known backlog of areas suitable for CREZ designation through a quicker and less costly proceeding to designate CREZs whose approval is almost a foregone conclusion and would allow the first contested case to focus on CREZs with substantial unrealized potential for renewable energy resources.

TIEC disagreed with the proposal of the West Texas Wind Energy Consortium and FPL that the commission should designate specific CREZs in this rulemaking proceeding. TIEC noted that this rulemaking is the appropriate forum to develop the applicable factors necessary to assess whether a particular area should be designated a CREZ; it is not the appropriate forum to make factual findings regarding the merits of any particular CREZ.

Similarly, ERCOT expressed its concern with designating CREZs in this rulemaking or another expedited rulemaking as proposed by FPL without the benefit of the results of the study that ERCOT is currently performing. Results of study may show different solutions than were indicated in more limited studies performed several years ago or in simple point-in-time transfer studies.

Horizon stated that designating a CREZ in this rulemaking would bias the result in favor of the proponent of that particular CREZ to the detriment of other parties and that other parties may have participated in this rulemaking project if it had been noticed as a CREZ designation project. Furthermore, Horizon stated that to allow some CREZs to be designated in this rulemaking while others would be subject to the contested case process would be discriminatory and directly contrary to the plain language of PURA.

The Wind Coalition replied that if CREZs are to be designated by rule, then it should be for all CREZs that meet clearly defined fast-track criteria, not just for some CREZs.

The Wind Coalition suggested that parties should be required to nominate a CREZ only though the ERCOT stakeholder process, so as to ensure the maximum "vetting" of the issues by not only the relevant stakeholders but also by an independent third party with capability to perform the requisite studies.

The commission declines to designate any CREZs in this rulemaking project. CREZs will be designated through a contested case proceeding where evidence can be presented and the commission can evaluate the statutory criteria for each zone.

In an effort to expedite the process for development of CREZs, AEP suggested that the commission prioritize certain candidate zones deemed necessary for expedited commission consideration and sever them from the remainder of the identified candidate zones and place them on a fast-tracked docket that could be heard directly by the commission, rather than referred to the State Office of Administrative Hearings. AEP further suggested that once candidate zones have been prioritized, CCN applications can also be prioritized and fast tracked.

Reliant stated that it does not oppose using a "fast track" process for certain candidate CREZs as long as the fast track process still allows for due process for affected parties.

TXU Competitive supported the expedited process for the designation of CREZs, but was concerned that any effort to expedite designation of CREZs without proof of proper financial commitments would be contrary to the legislative intent of Senate Bill 20 and would ultimately have negative impacts on the ERCOT wholesale market.

TXU Competitive also cautioned that the commission should make distinctions regarding fast track treatment only within each CREZ designation contested proceeding when it has the benefit of the facts and circumstances before it and can make full use of the procedural tools available within the case.

FPL suggested that if the commission chooses to utilize contested cases to designate CREZs, the contested case should be processed in five months, but it should retain in the rule the proposed provision for good cause exceptions.

TXU Competitive also noted that the designation of a CREZ will not affect any particular wildlife habitat, so the provision in the proposed rule allowing for consideration of TPWD comments only invites unnecessary delay.

TIEC suggested an alternative to contested cases would be to more fully develop the planning aspects of the CREZ zones through ERCOT.

TIEC suggested that several CREZ applications could be reviewed in each proceeding. Cities agreed with this suggestion. TXU Competitive recommended that the proposed §25.174(a) be modified to provide that the contested case proceedings before the commission to address CREZ designations should be scheduled no more frequently than once every three years. Cities also agreed with this suggestion.

The commission may fast track and/or sever certain CREZs from the main contested case as the facts are evaluated.

Horizon stated that gauging a CREZ based on SGIAs or completed feasibility studies is patently unfair when one CREZ has access to transmission and can readily achieve these benchmarks, while another candidate CREZ has access to transmission and no ability to interconnect or to initiate a feasibility study with ERCOT.

Shell advocated implementing a "fast track" approach for CREZs that demonstrate a level of financial commitments exceeding $50 million for at least 2,000 MW of total capacity in the proposed CREZ.

Horizon stated that it substantially agrees with the comments of the Wind Coalition targeted to streamline the CCN dockets that will result in a final order designating a CREZ. However, Horizon did not agree with the Wind Coalition suggestion to equate the signing of an interconnection agreement with financial commitment.

Horizon further stated that if any CREZ is put on a fast track, any project should be given consideration if it has posted the entire $25,000 deposit and that a project for which a feasibility study has been completed, or an interconnection agreement has been signed, should not be given preference over a project that as posted the $25,000 deposit.

Financial commitment is one of several statutory criteria that the commission will evaluate in making its determination, and this may also be a basis for determining whether to fast-track a set of potential CREZs. Because other factors such as landowner cooperation may be relevant in conjunction with financial commitment, however, the commission declines to establish financial benchmarks in the rule.

ITC suggested that one option for reducing steps in the CREZ process would be to include all upgrades required for a CREZ, both the transmission line(s) to potential markets and all the system upgrades needed to accommodate those new lines, in one proceeding, including approval of cost recovery.

The commission notes that preparing the detailed studies that are needed to site a transmission line and to evaluate all of the system upgrades needed to accompany the CREZs will take time. Including them in one proceeding would likely slow that one proceeding down significantly; therefore, the commission declines to incorporate ITC's suggested change.

FPL proposed that the 12 months before a CCN application is filed be shortened to nine months, retaining the provision for good cause exception.

TXU Delivery, in its reply comments, stated that many of the activities cannot be accomplished in shorter periods of time simply by working harder. TXU Delivery stated that FPL's recommendation to reduce the time period for the preparation of a CCN application from one year to nine months should be rejected. TXU Delivery explained that establishing a nine month period in this rulemaking for the preparation of a CCN application, without the elimination of significant notice requirements and commission routing requirements, would simply result in the creation of a date that in all reasonable likelihood would never be met.

AEP also stated that the proposed one-year time period for filing all CCNs for transmission facilities is the minimum amount of time required and that it is an aggressive schedule that utilities will have a difficult time meeting.

CenterPoint and AEP stated, and Wind Coalition agreed, that an application for a CCN for transmission facilities identified to serve a CREZ should be processed within six months of submitting the application. This time frame, they stated, is consistent with the

same deadlines used for applications addressing transmission facilities designated as critical to reliability by ERCOT.

TXU Delivery suggested that in order to expedite the construction of CREZ transmission facilities, the adopted rule should specify that such projects are an exception to the provisions of the ERCOT planning charter.

ERCOT did not agree with TXU Delivery's suggestion. ERCOT stated that it does not believe it is advisable to create an exception to an ERCOT procedure in the commission's rules. ERCOT recommended that ERCOT and market participants have the opportunity to weigh the potential benefits and drawbacks of changes to these transmission lines before such changes are adopted. ERCOT added that it can implement expedited procedures for this review.

The commission agrees with ERCOT with respect to providing no exception to the ERCOT planning charter. It further finds that a 12-month deadline for a transmission utility to prepare its CCN application is a reasonable starting point; however, the commission retains the right to adjust this requirement if the facts warrant.

AEP and TXU Delivery suggested that the routing evaluation process be streamlined by requiring a utility to provide only newspaper notice for public meetings for public input on the preliminary routes. AEP asserted that providing newspaper notice for the front end of the routing evaluation process will not adversely impact the due process of those landowners affected by the routes filed with the commission for consideration because they will still ultimately be provided notice and an opportunity to be heard before the commission. TXU Delivery explained that the time and expense for transmission utilities to determine the tax roll property owners of each property crossed by a preliminary routing link can be extensive. Furthermore, it said, the environmental assessment and routing study are likely to be placed on hold while the tax roll research is performed.

The Wind Coalition and AEP agreed with TXU Delivery that procedures should be waived as they concern providing direct mail notice for public meetings to landowners affected by the preliminary routing process for CCN transmission line applications under P.U.C. Procedural Rule §22.52(a)(4). AEP noted that experience in past CCN applications has been similar to TXU Delivery's in that noticing affected landowners by direct mail has not always yielded greater attendance at public meetings.

The rule proposal that the commission published for comment related to the substantive rules for designating CREZs. It did not propose amendments to the procedural rule relating to transmission CCNs. The comments from TXU Delivery, AEP, and the Wind Coalition are beyond the scope of this proceeding. In addition, the commission is not prepared now to limit the ability of landowners to participate in this very important process of siting a transmission line. The commission finds that it is prudent to have landowner input earlier in the process rather than later. Inadequate notice to landowners early in the process may result in delays in identifying environmental or community concerns that have a legitimate impact on transmission routing.

TXU Delivery also suggested that the commission modify §25.101(c)(5) of this title (relating to Certification Criteria) to provide exceptions for certain CREZ transmission projects. TXU Delivery stated that by modifying the 230 kV limitation in the above project descriptions for facilities to serve CREZs, the commission can increase the likelihood that certain CREZ transmission projects could be constructed without the need of a formal CCN application proceeding.

AEP agreed with TXU Delivery that proposed rule provide a modification for CREZ projects, to the commission's existing exempt CCN provision in §25.101(c)(5), but would raise the voltage limit to 765kV rather than 500 kV as suggested by TXU Delivery.

The commission declines to add to the new rule any provision that would provide special CCN exemptions beyond those identified in PURA for this purpose.

The Wind Coalition suggested several ways to shorten the CREZ process. First, it suggested allowing utilities to start on CREZ CCN preparation work immediately. Second, the commission could reward utilities for timely filed CREZ CCNs. Third, the group recommended using procedural tools like severance only in a manner that does not inhibit approval of other potential CREZ zones. Fourth, the Wind Coalition recommended letting existing constraint relief work proceed apart from the CREZ process. Finally, the group said, the commission could shorten the open season periods established in the rule to 30 days.

TXU Delivery stated that inclusion of target in-service dates for the completion of transmission facilities at the time of CREZ designation will send inappropriate signals to market participants about the actual completion date of such facilities.

The commission will consider the various options recommended by parties in the context of specific cases, as there may be circumstances in which some of the measures would create complications impossible to anticipate in this rulemaking.

Comment on specific subsections

§25.174(a)

AEP Companies noted that the proposed rules do not determine which entities have the burden of proof regarding CREZ designation, and recommended that specific procedures for conducting CREZ contested cases be specified. AEP Companies also recommended that references to "upgrades" be changed to "improvements" to better describe construction of new and upgraded old facilities, as well as to be more consistent with other PUC rules. ITC Grid Development suggested clarifying the term "upgrades" to separate new transmission from improvements of existing transmission, and that new transmission development be awarded on merit rather than proximity.

The commission expects that the initial proceedings to designate CREZs will result in a number of competing proposals for areas to be designated as CREZs. In the context of the legislative mandate to designate CREZs, it is difficult to see how the commission could assign the burden of proof among competing CREZ proposals or how doing so would assist the commission in making its determination. The commission will weigh the relevant evidence that is presented in the cases and decide which area or areas should be designated as CREZs.

ERCOT requested that it be given six months notice prior to any future study required of ERCOT relating to CREZ designation. ERCOT also noted its concern that its current report may not contain all information needed by the commission, especially location-specific information regarding maximum levels of renewable energy in a given CREZ.

PURA §39.904(k) requires ERCOT and the commission to study the need for CREZs every two years. The commission intends to use these biennial reports as the basis for determining the need for additional CREZs after 2007. If, upon receipt of the biennial

report from ERCOT, it finds that another CREZ may be in the public interest, the commission will set an appropriate timetable for additional study at that time, taking into account current needs and circumstances as well as the time required by ERCOT to conduct its study. No change to the rule is necessary.

Xcel asked for specific language allowing opponents of CREZ designation to submit evidence it deems appropriate. Xcel also requested that separate contested cases be conducted for CREZ designation outside ERCOT. SPP and ITC Grid Development agreed that ERCOT and non-ERCOT CREZ designation should occur in separate contested cases. The Wind Coalition agreed that SPP concerns about non-ERCOT application of the rules should be addressed, and suggested that many of the programs in the rule can be administered by ERCOT for extra-ERCOT areas. TIEC asked that any non-ERCOT CREZ rules be carefully considered in light of FERC rules and OATT requirements.

In a contested case, affected parties already have the right to intervene and provide comments and evidence in response to a proposed action, so the specific language allowing opponents to do this is unnecessary. As discussed above, when the contested cases are in front of the commission, the commission may sever certain candidate CREZ proceedings. At that time, the commission will consider whether to sever the ERCOT CREZs from non-ERCOT. It is also possible for the staff to file separate proceedings, if circumstances warrant.

SPS suggested that specific language regarding the sharing of costs of CREZ transmission outside ERCOT with load inside ERCOT be added to the rule, so as not to burden customers in regions with high wind capacity, but low load with excessive transmission costs. SPS also noted its concern about the possibility of multiple rate cases related to recovery of CREZ related transmission costs, and asked that CREZ designation also address recovery of costs. Reliant replied that cost division is better handled through the standard regional transmission planning processes.

The commission does not have adequate information to address this issue in this rule, in particular, since only SPS commented on this issue. This issue would be more appropriately addressed in a CREZ proceeding or CCN proceeding relating to a transmission line that imports power into ERCOT.

Celanese, requested clarification regarding the role of non-renewable generation in the process. Specifically, Celanese suggested that it be clarified that non-renewable generation may interconnect through transmission facilities constructed for a CREZ, but that non-renewable generation would not be part of the processes to assign transmission rights for allocated renewable dispatch capacity within the CREZ. AEP Companies agreed that CREZ related transmission planning should not rule out non-renewable interconnection.

The commission agrees with Celanese and AEP. While the objective of a CREZ is to increase the amount of renewable resources on the grid and provide necessary transmission for those resources, ERCOT will include existing and anticipated fossil-fueled units in its study of potential CREZs, and the commission may take all resources into account when evaluating the choices and seeking transmission solutions. The commission's mandate is to encourage renewable energy development by placing transmission infrastructure in places advantageous to renewable energy generation resources in a manner that is most beneficial and cost-effective to the customers. Physical access to the transmission network must remain open to any technology, however.

Horizon argued that all proposed CREZs be treated procedurally identically, regardless of the presence or absence of existing transmission in the proposed CREZ. Horizon also recommended that the rule contain contested case procedural schedules and further delineation of financial and other requirements, and allow for competitively sensitive information to be provided on a confidential basis. The Wind Coalition also believed standard confidentiality protections should be extended to sensitive information submitted by ERCOT and parties.

The commission notes that the presence or absence of transmission in a certain area will most likely affect the cost effectiveness of CREZ-related transmission improvements. As is noted above, the rule proposal that the commission published for comment related to the substantive rules for designating CREZs. Procedural schedules and similar details are normally set in the docketed case itself, and the commission finds no need to treat a CREZ docket or a CREZ-related CCN docket differently in this regard, except where required by statute. The commission will treat all confidential information in accordance with its existing procedural rules.

TXU Competitive recommended that new CREZ designations be considered on a triennial basis, rather than "in subsequent years as needed," to reduce administrative burden. It also recommended extending the deadline for staff to initiate a contested case from five to thirty days after ERCOT delivers its report, and that entities requesting a CREZ include specific information related to that nomination.

FPL suggested holding CREZ proceedings in all years, unless deemed unnecessary by the commission. FPL also recommended specific public notice methodology, and a specified 21 day intervention and CREZ proposal deadline for the contested cases. The Wind Coalition replied that all CREZ proposals should come through the ERCOT stakeholder process, rather than being initiated with the commission after the ERCOT report is complete. AEP Companies did not oppose FPL's proposed notice methodology.

The commission disagrees with the triennial timeframe proposed by TXU Competitive, but acknowledges its desire to reduce administrative burden. The need for a subsequent CREZ proceeding will be informed by the biennial reports already required of the commission and ERCOT under PURA §39.904(j) and (k). The commission declines to restrict its future options further than that, however. The commission also agrees with TXU Competitive that it may be prudent to allow more than five days before initiating the contested case. The five-day deadline is deleted from the rule. Nevertheless, the commission declines to establish a 30-day timeframe as recommended by TXU Competitive. The commission's intent is to complete its initial CREZ selection as expeditiously as possible, and notes that the process may move faster if the commission can explore technical issues with ERCOT, staff and stakeholders before ex parte restrictions are in place.

Moreover, the commission does not want to limit proposals originating from outside the ERCOT stakeholder process. Independent proposals may need additional time, which favors opening the docket and establishing a procedural schedule promptly. Parties proposing areas for CREZ designation should file information similar to the ERCOT report if they expect the commission to consider them alongside zones studied by ERCOT.

ERCOT suggested that subsection (a)(2)(B) be modified to state the potential production which could reasonably be achieved for each region. ERCOT also suggested additional language adding production potential and fuel savings due to the CREZs. SPS, ITC, and SPP recommended that ERCOT be required to consult with other RTOs and similar organizations in analyzing potential CREZs outside ERCOT. SPS also asked that a provision be added to allow entities to appeal or comment on the ERCOT reports. AEP Companies agreed that ERCOT should be required to consult other RTOs and ICTs.

The commission intends for ERCOT to use its professional judgment in deciding what information to include in its report. What is specified in subsection (a) is a minimum and not an exhaustive content list. The commission agrees that consultation with the affected transmission organization should be required in cases of CREZs outside of ERCOT, and makes the change suggested by SPS, ITC, and SPP. The commission notes that a contested case provides the venue for any challenge to an ERCOT report that any intervenor may wish to make, as suggested by SPS, and that no further change to the rule is necessary.

CenterPoint recommended that subsection (a)(2)(C) be modified to include identification of transmission improvements that will require a CCN. AEP Companies recommended striking subsection (a)(2)(D) and modifying subsection (a)(2)(C) to require "a description of the transmission system improvements necessary to provide transmission service to each CREZ and the aggregate of zones that share common transmission constraints." Similarly, ERCOT recommended that subsection (a)(2)(C) be modified to include descriptions of transmission upgrades required for service from "each region and reasonable combinations of regions to consumers."

TXU Delivery recommended that a description of nonrenewable interconnection requests near the CREZ be added to the ERCOT report. TXU Delivery also requested that the ERCOT report include specific technical information on required transmission facilities to serve the CREZ. AEP agreed with the logic behind TXU Delivery's proposals to address the need for more specificity. FPL recommended that a preliminary cost estimate for necessary transmission upgrades be included in the ERCOT report.

The commission finds that it is unrealistic to expect the ERCOT study to contain the degree of specificity sought by TXU Delivery and AEP. The purpose of that study is to provide enough information for the commission to compare options, select CREZs, and designate, in general terms, what transmission facilities are needed to serve the CREZs. More detailed planning will be required for the transmission facilities and most will require commission review in a subsequent CCN proceeding. Aside from the minimum requirements specified in the rule, the commission expects ERCOT to use its professional judgment in deciding which factors are relevant, and what level of detail is required in its report. If the commission requires more information on any particular alternative, the commission will provide ERCOT specific direction during the CREZ docket or request the information from parties.

In response to FPL, the commission notes that the proposed rule already provides for a preliminary cost estimate from ERCOT for transmission. These estimates need not be exhaustively precise relative to the final actual cost. They only need to be sufficient to allow the commission to determine in the most beneficial and cost-effective transmission option.

AEP asked that the commission's intent regarding the role of CREZs outside the ERCOT footprint be addressed. AEP also recommended that the need to operate traditional synchronous generation within and among CREZs be addressed in subsection (a)(2)(E). ERCOT replied that such planning should be handled later in the process, once the potential CREZ locations have been narrowed by the commission. ERCOT also noted that the language offered by AEP presupposes the need for synchronous generation in all areas; and that this is an issue better addressed on a case by case basis. TXU Competitive noted on reply that additional clarification on interconnection of CREZs outside of ERCOT is needed, and recommended that interconnection should be based on geographic location, with assignment to the utility which serves that territory.

The commission agrees with ERCOT that CREZs involving synchronous ties with SPP or another RTO should be considered case-by-case, and possibly in a separate CREZ docket. The commission amends the rule to clarify that there may be more than one CREZ proceeding at a time, and it believes that this change addresses the issue. The new rule makes no change to other commission rules governing utility responsibility for transmission improvements.

LCRA proposed alternative language for subsection (a)(2)(C), and suggested that all references to "regions" and "zones" in §25.174(a)(2) be changed to specify "CREZ". ERCOT requested that the rule allow ERCOT until May 1, 2007 to provide an estimate of additional ancillary service capacity required for the 2006 CREZ report.

The commission agrees with the clarification recommended by LCRA. With respect to the ancillary services study, the commission finds that the report can be included in the procedural schedule that the commission will establish for the first CREZ docket, and modifies the rule to accommodate this change.

TPWD, the Wind Coalition, Horizon, and TWWA suggested expanding the language of §25.174(a)(3) to create voluntary guidelines agreed to by all stakeholders regarding environmental issues, through a process involving the Executive Director of TPWD or a TPWD-appointed committee, and suggested potential contents for these guidelines. TWWA also recommended that IAs be conditioned on TPWD advice regarding compliance with these guidelines.

FPL argued that the commission has no statutory authority over generation site selection or environmental issues related thereto, and so §25.174(a)(3) should be struck entirely, leaving current environmental management procedures in force. FPL and TXU Competitive noted that TPWD may participate in CREZ designation cases whether invited by this section or not.

On the other hand, King Ranch argued that a mandatory environmental impact study should be conducted in selection of generation sites in a CREZ.

The commission declines to add the language proposed by TPWD and TWWA. While the commission has no objection to voluntary guidelines developed under the leadership of TPWD, it would be inappropriate for one state agency to adopt a rule detailing the activities of another. As these guidelines would be voluntary, the commission finds that the rule language should be permissive rather than prescriptive, and should allow a high degree of flexibility for TPWD and the parties with whom it negotiates. Nevertheless, the commission recognizes that avian issues could be an issue in siting wind power. FPL and TXU Competitive recommend, in effect, that the commission's

rules be blind to this reality, a suggestion that the commission rejects. The proposed language as worded appropriately allows avian and other environmental issues to be considered, and does so in a manner consistent with the commission's statutory authority and that of TPWD.

CenterPoint recommended modifying subsection (a)(4)(B) to clarify that the commission use estimated, rather than actual, transmission construction costs in its designation of CREZs. Denton recommended that estimated hourly production and impact on ERCOT dispatch by renewable assets be considered in determining CREZs. LCRA recommended that it be specified that costs of transmission capacity "within and outside the CREZ" be considered.

The commission agrees with CenterPoint and LCRA and adds clarifying language throughout the rule, and moves this section to subsection (c), addressing the cost-benefit analysis of the transmission plan. The commission declines to add language requiring estimates of hourly production and dispatch effects, however. The need for such specificity in the study is left to ERCOT's professional judgment, recognizing that in the docket the commission may direct ERCOT to conduct an hourly analysis if needed.

The Wind Coalition recommended that the criteria by which CREZs will be selected be further clarified to specify the selection of cost effective sites, and that they should facilitate long-run and short-run growth of renewable resources, be statewide, and recognize the positive social benefits of non-renewable generation and system reliability that CREZ-driven transmission may bring. Similarly, AEP recommended that the most beneficial and cost-effective transmission capacity additions in each zone and from the aggregate of candidate zones should be considered by the commission in its evaluation. TIEC replied that the statute does not contemplate using "societal benefits" in analyzing potential CREZs, but rather seeks a cost-effective and efficient solution to renewable transmission needs and that existing programs already incorporate these societal benefits. TIEC explained that it seeks objective, rather than subjective, standards for the selection of CREZs. In its initial comments, TIEC advocated evaluating total transmission costs per MW of potential generation. On the other hand, King Ranch suggested adding other factors, such as the effects of generation on environmentally sensitive areas, military readiness related to radar blockage by windmills, fuel diversity and availability, and overall ERCOT needs. State Representative David Swinford suggested including local support for and economic benefits of renewable development in criteria for selection, and to more directly address the 10,000 MW target that the Legislature also included in Senate Bill 20.

The commission agrees with AEP that PURA requires a specific cost-benefit analysis for the plan to construct transmission capacity necessary to deliver to electric customers the electric output from renewable energy technologies in a CREZ. The commission amends the rules throughout to reflect PURA and the factors that the commission may consider when making its cost-benefit analysis. Given the local impacts of wind power, members of the public will want an opportunity to comment on which zones are selected. The commission finds it reasonable to give appropriate weight to the information provided by ERCOT or by SPP, yet allow consideration of other factors (such as those mentioned by Representative Swinford and by King Ranch) that may be less quantifiable. The commission also concludes that the rule provides an avenue to meet the 10,000 MW target, without additional changes to the rule. Prices in the ERCOT market are highly correlated to the price of natural gas, there are many good wind resource areas in Texas, and this rule will provide greater certainty about the development of transmission facilities to permit renewable generation to deliver its energy to market. The commission believes that Texas is the most hospitable market in the country for wind development and that Senate Bill 20 and this rule will only make it more hospitable.

TXU Competitive recommended that 345 kV transmission upgrades be specified in CREZ orders. ERCOT opposed such a limitation on upgrades. Reliant and TIEC said voltage selection for upgrades is better handled in a contested case, rather than in the rule. ITC noted that multi-party discussions involving local stakeholders, and market participants may be needed to select locations, and so the ERCOT study should have more general, rather than specific, proposals regarding transmission needs.

Horizon recommended that the rule specify that locations for interconnection be placed near wind developments in a CREZ, to limit the need for additional easements to connect wind developments to distant hubs.

The commission agrees with ITC, TIEC and Reliant that specific voltage levels should be discussed in the CREZ docket. The commission declines to add Horizon's recommendation regarding the proximity of interconnection points to existing wind development; routing issues are more appropriately addressed in the CCN docket, not in the CREZ docket. In addition, the commission believes that it may be appropriate for wind developers to bear the cost of delivering power to specific locations that are determined to be the best locations for interconnection facilities or hubs that serve a CREZ.

FPL suggested accelerating the final order from the proposed six months after initiation of the case to five months, arguing that its proposals regarding notice and intervention allow a faster timeline.

Based on its experience in processing contested cases, the commission concludes that five months is not sufficient time and declines to reduce the schedule.

AEP recommended the consolidation of subsection (a)(5)(B) and (D) into a single provision, which would describe "any necessary transmission improvements in each CREZ, and from each CREZ or between aggregates of zones to address transmission constraints within the CREZ, from the CREZ, and between aggregate zones. ITC asked that the term "upgrades" be clarified.

ERCOT recommended miscellaneous language changes to subsection (a)(5) for clarification, and to combine subsection (a)(5)(B) and (D) because distinctions between improvements needed inside and outside the CREZ zone may be difficult to make.

The commission agrees with the clarifications proposed by ERCOT, AEP and ITC, and amends subsection (c) to reflect the analysis required by PURA.

ITC asked the commission to include transmission-only utilities among the types of utilities that could be designated to install CREZ improvements. The company said that the major advantages of transmission-only utilities are their specialization with transmission construction and operation, and their complete independence from other market participants. AEP recommended that current subsection (a)(5)(E) be modified to note that the entities responsible for improvements are, specifically, utilities.

The commission agrees with ITC and adds language to the rule allowing entities interested in constructing CREZ improvements to submit expressions of interest to the commission after a final CREZ order has been entered.

The Wind Coalition recommended adding a section allowing for expediting CREZ designation for regions with six million dollars of financial commitments, or IAs covering 50% of the proposed transmission capacity, or in cases where a specific CREZ is necessary to reach goals specified in PURA.

By clarifying its ability to sever potential CREZ determinations into separate dockets, the commission effectively allows for expedited treatment of zones where significant financial commitment has been provided. The commission declines, however, to incorporate specific thresholds in the rule, because the commission may still need to compare the financial commitments and costs and benefits of various proposed CREZs.

SPP recommended that subsection (a)(5) be applied specifically to ERCOT, and proposed a new subsection (a)(6) for CREZs that involve SPP, which is more consistent with SPP's OATT. SPP stated that it believes that its FERC-approved tariff contains requirements which may conflict with the current subsection (a)(5). AEP agreed that SPP specific concerns should be addressed and support this new section.

The commission agrees with SPP and AEP and clarifies subsection (a) consistent with SPP's comments.

§25.174(b)

SPP said that the indicators of financial commitment described in paragraphs (1) and (2) of the proposed subsection seemed broad enough to encompass commission consideration of the manner in which SPP verifies the commitment of the developer both to build and to interconnect the designated resource. Paragraph (3) would not be applicable to SPP, while paragraph (4) would require a tariff mechanism that SPP currently does not have. SPP recommended that, when considering generator financial commitment, the commission invite the recommendation of the independent transmission entity in which the CREZ would be located.

The Wind Coalition said that paragraph (1) of this subsection should elaborate on examples of financial commitments, and task the developer with substantiating them. The proposed rule provides that existing renewable energy resources, signed IAs, and executed lease agreements are indicators of financial commitment; the Wind Coalition recommended adding to this list funds paid for transmission studies, lease options, and other site agreements such as easements.

Horizon, on the other hand, recommended that signed IAs not be included as an indication of financial commitment. It also recommended adding a provision to ensure that a developer's efforts to coordinate with the TPWD to develop voluntary site guidelines would be taken into account.

FPL generally supported the mechanisms in the proposed rule for measuring generator financial commitment, saying the measures were appropriately technology-neutral, accommodated a variety of business models, and established a level playing field between large and small developers. However, FPL said that if all the listed measures were equally valid, the priority dispatch provisions should not be limited to the progressive financial commitment mechanism described in paragraph (4). The company said the public policy arguments in favor of priority dispatch--displacing energy deployments from fossil-fuel generators and improving transmission planning--are equally valid for all methods described in this subsection.

The commission rejects Horizon's suggestion that IAs not be used as an indicator of financial commitment. The security requirement constitutes a ready measure that is already known to developers, and is accessible to small developers. The commission agrees with the Wind Coalition that transmission study fees and similar commitments should be taken into account as well. The commission recognizes that developers incur significant costs at various stages when planning a wind farm. These costs are tangible indicators of financial commitment, and the commission concludes that, like pending or signed IAs, they may be taken into account.

TIEC said that in general the proposed rule did not adequately address the financial commitment standard included in Senate Bill 20, because there was no articulation of how the varying financial commitments would be evaluated. TIEC emphasized that any financial contribution by generators should be used to lower the amount of money that customers have to pay for transmission. Instead of the mechanisms in subsection (b)(3) and (4), TIEC proposed an auction in which interested generation developers, including non-renewable generation developers, would offer cash deposits to reserve a certain amount of capacity on the expanded transmission for the CREZ. Once the CREZ was chosen, the money contributed by developers would be used to offset the cost of the transmission facilities and serve to lower the burden on customers. In reply comments, Cities and King Ranch supported TIEC's proposal.

TXU Delivery and the Wind Coalition, however, raised concerns in their reply comments that the TIEC approach was essentially a requirement for participant funding of transmission. The Wind Coalition noted that Senate Bill 20 did not provide authority for the commission to require participant funding. It further disagreed that money deposited for the purpose of indicating financial commitment should be redistributed to utilities or their ratepayers. TXU Delivery did not explicitly oppose participant funding, but it did note that the issue has not been raised or vetted in sufficient detail to allow its incorporation into the rule as published. TXU Delivery suggested that if the commission were inclined to add a participant funding requirement, it should republish the rule.

LCRA proposed using flowgate rights for the CRR escrow mechanism in subsection (b)(3) rather than point-to-point rights, as doing so would be simpler. Flowgate rights would capture only the constraints coming out of the CREZ and would accurately reflect the direction of the constraint. If the rule were to use point-to-point CRRs, however, LCRA suggested using as the sink point the hub that was closest to the CREZ electrically. LCRA said all CRRs must operate within the boundaries established by the ERCOT protocols.

TXU Delivery said subsection (b)(3)(A) should include a requirement for a renewable energy developer to include a proposed schedule for development of a project. It also said the meaning of "in proportion to the MW of commercial renewable resource to which they are assigned" in §25.174(b)(4) was unclear.

The commission declines to require a development schedule as recommended by TXU Delivery. However, it adds a provision that a developer's deposit may be forfeited if the project does not begin delivering energy within one year of being notified by the TSP that the transmission system can accommodate the developer's interconnection request, with the proviso that the

commission can extend this deadline if circumstances warrant. The commission recognizes that many factors beyond the developer's control can delay completion of a project, or may require bringing a project on-line incrementally. A developer can demonstrate the existence of such circumstances once they occur, and at that time the commission will evaluate the need to grant more time.

§25.174(c)

The Wind Coalition said that the goal of Senate Bill 20 is not just to relieve existing transmission constraints to areas with existing wind generation, but to also provide new transmission infrastructure for the development of new wind generation capacity. Some of the new wind capacity may be incremental in existing wind farm areas, but much more of it will be in areas that currently do not have transmission infrastructure sufficient to support new wind development.

In addition, the Wind Coalition said that transmission planning work already performed by the electric grid operator due to existing transmission congestion may indicate that the existing problems are being addressed and should not be part of the CREZ process. Specifically, ERCOT is already addressing known transmission constraints in Texas, and those efforts should proceed without being part of a CREZ proceeding.

Texas General Land Office recommended a strong, detailed plan from the commission including offshore wind.

The Legislature has directed the commission to ensure that transmission to serve a CREZ is planned and built in a manner that is most beneficial and cost-effective to the customers. Consequently, the commission cannot exclude a potential transmission improvement from the CREZ process simply because ERCOT is studying it as a solution to some other reliability problem. If one improvement can serve multiple purposes--one of which is to increase the amount of renewable energy delivered to customers--then that project has the potential to be more cost-effective. Being included in the CREZ order would cause the improvement to be placed in service sooner, and would assure the utility of cost recovery. The commission therefore declines to exclude from the CREZ process transmission improvements already under study for other purposes. Transmission alternatives that ERCOT has identified as likely to be needed for reliability purposes clearly may be relevant in assessing the costs and benefits of designating transmission for CREZs, and the commission may consider this issue in the CREZ docket.

The commission finds no barrier in the rule to consideration of off-shore wind power. An off-shore resource must connect to the grid on-shore at some point, and there is no reliability difference between off-shore wind power connecting at that point, and on-shore wind power located at that point. The main differences are the cost of bringing the wind power to shore and whether this cost is borne by customers or by the developer. If the cost is borne by customers, then law requires that these costs be taken into account when evaluating the cost effectiveness of off-shore wind power relative to on-shore wind power. That is an issue to be addressed in the CREZ docket, not in this rulemaking.

CenterPoint urged the commission to include provisions in the rule that address recovery of the costs associated with preparing and submitting a CCN application identified to serve a CREZ. CenterPoint also recommended adding costs not recovered from renewable generators to be added to the TCOS, and that would address the "need and useful" standards for inclusion in capital projects. CenterPoint and LCRA said utilities should be entitled to recover all costs if the CCN is denied.

Cities disagreed with AEP and TXU Delivery regarding special ratemaking treatment for transmission investments during CREZ process. Cities said there is no basis for loosening or otherwise modifying existing regulatory review and recovery standards that apply to planning, investment and administrative costs that rise from the new CREZ process.

The commission agrees with CenterPoint and LCRA that the cost of preparing a CCN application, if ordered to do so by the commission, should be recoverable. Such costs should not be beyond review, however. Even if the purpose is acceptable, the commission should retain the ability to exclude wasteful or superfluous expenditures toward that purpose. Such a review currently would take place in the utility's next rate case, and the commission finds no need to do otherwise with respect to CREZ-related CCN costs.

ERCOT said §25.174(c)(3) could limit the ability of non-CREZ generation to make use of transmission related to CREZ development, even when that transmission includes lines that are remote from the CREZ. ERCOT suggested that the commission consider whether additional parameters on the restriction of connecting to all new CREZ-related transmission facilities are warranted. ERCOT noted that the proposed rule currently does not contain a mechanism or criteria to release a CREZ-related hold on the use of transmission facilities that are not, in fact, utilized.

Similarly, TXU Delivery recommended modifying §25.174(c)(3) to provide for better network utilization of the CREZ transmission facilities. The present wording appears to needlessly prohibit the use of the designated CREZ facilities by any non-renewable generation, when the intent should be to preserve the capacity in the area network for the designated CREZ capacity. Accordingly, TXU Delivery proposed modification of the proposed rule to permit the CREZ transmission facilities to be incorporated into the network, to ensure that the intended capacity is reserved for the renewable generation, and to allow for efficient use of all facilities in the region.

LCRA proposed changing §25.174(c)(3) to clarify that transmission for the designated CREZ size may be considered fully utilized, but if a transmission line has additional capacity, that capacity can be considered for other interconnection. ITC agreed, saying that integrating non-wind generation with wind generation would provide better network utilization of the CREZ transmission facilities.

Reliant said §25.174(c)(3) would be problematic if interpreted to mean that for renewable generation facilities, the open-access transmission rules do not apply. Reliant says that PURA §39.904(i) requires that transmission to CREZ must be in accordance with the principle of open transmission access.

The commission agrees that full utilization of the transmission system is desirable. The main issue with respect to this rulemaking is the potential for excessive curtailment of renewable resources. As discussed elsewhere in this order, the commission finds that if full utilization were to result in curtailment, the problem should be addressed in a separate docketed proceeding rather than this rulemaking.

§25.174(d)

TXU Delivery said the meaning of the phrase "request interconnection agreements" in §25.174(d)(4) was unclear. It noted that proposed §25.174(d)(1) addresses a request for interconnec-

tion pursuant to the provisions of §25.198(c) of this title (relating to Initiating Transmission Service), but that there is no market process for "requesting" an interconnection agreement. Following completion of the necessary interconnection studies, transmission utilities and generators can prepare and sign an interconnection agreement when the parties are ready to proceed. Through the use of the IA, the process for developing and executing an interconnection agreement is often short and routine. To the extent it is the commission's intent that "request interconnection agreements" means to execute an agreement, TXU Delivery noted that it is certainly possible that the necessary studies may not be completed in time to allow for execution of an interconnection agreement during the open season set forth in the proposed rule.

The commission acknowledges the points made by TXU Delivery and amends the rule accordingly.

The Wind Coalition, FPL and Shell said §25.174(d)(3) should require transmission providers to accommodate all development interest by expanding the transmission plan. Otherwise, it said, the commission should allocate available transmission on a pro-rata basis and restrict further interconnection of renewable resources. The Wind Coalition said it would be appropriate to allocate available capacity to projects that have participated in the open season and demonstrated financial commitment as described in proposed subsection (b). It said interconnection preferences should be tradable to other entities. Shell recommended a blind bid process in the event there are more entities with financial commitment in the CREZ.

Horizon proposed that if there are more entities demonstrating financial commitment for a CREZ than the CREZ transmission facilities will allow, the commission should use a blind bid process to determine the successful wind developments. In the event that transmission improvements are feasible, the commission may also require the expansion of transmission facilities to the CREZ to accommodate the additional financial commitment to the zone.

The commission notes that it has the authority to increase the planned capacity of a CREZ as suggested by the Wind Coalition, FPL and Shell, in the event that the degree of expressed interest exceeds the planned maximum amount. Whether such a determination would be appropriate and cost-effective would depend on the facts particular to the case. Therefore, it would be inappropriate for this rule to require an automatic increase in the planning capacity for any CREZ capacity simply because the CREZ was oversubscribed early. The blind bid process proposed by Horizon is unlikely to be necessary given the priority provisions incorporated into the rule. If facts in the CREZ docket reveal unusual circumstances that require additional measures, however, the commission may consider in the docket blind bids or other options that the commission deems suitable to the circumstances.

All comments, including any not specifically discussed herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

The new section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.001, 14.002, 39.101(b)(3), and 39.904 (Vernon 1998 & Supplement 2006) (PURA). Section 14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101(b)(3) provides that a customer is entitled to have access to providers of energy generated by renewable energy resources; and §39.904, provides the commission the power to adopt rules necessary to administer and enforce the programs to promote the development of renewable energy technologies.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 39.101, and 39.904.

§25.174. Competitive Renewable Energy Zones.

(a) Designation of competitive renewable energy zones. The designation of Competitive Renewable Energy Zones (CREZs) pursuant to Public Utility Regulatory Act (PURA) §39.904(g) shall be made through one or more contested-case proceedings initiated by commission staff, for which the commission shall establish a procedural schedule. The commission shall consider the need for proceedings to determine CREZs in 2007 and in subsequent years as deemed necessary by the commission.

(1) Commission staff shall initiate a contested case proceeding upon receiving the information required by paragraph (2) of this subsection. Any interested entity that participates in the contested case may nominate a region for CREZ designation. An entity may submit any evidence it deems appropriate in support of its nomination, but it shall include information prescribed in paragraph (2)(A) - (C) of this subsection.

(2) By December 1, 2006, the Electric Reliability Council of Texas (ERCOT) shall provide to the commission a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from wind energy resources. ERCOT shall consult with other regional transmission organizations, independent organizations, independent system operators, or utilities in its analysis of regions of Texas outside the ERCOT power region. At a minimum, the study submitted by ERCOT shall include:

(A) a map and geographic descriptions of regions that can reasonably accommodate at least 1,000 megawatts (MW) of new wind-powered generation resources;

(B) an estimate of the maximum generating capacity in MW that each zone can reasonably accommodate and an estimate of the zone's annual production potential;

(C) a description of the improvements necessary to provide transmission service to the region, a preliminary estimate of the cost, and identification of the transmission service provider (TSP) or TSPs whose existing transmission facilities would be directly affected;

(D) an analysis of any potential combinations of zones that, in ERCOT's estimation, would result in significantly greater efficiency if developed together; and

(E) the amount of generating capacity already in service in the zone, the amount not in service but for which interconnection agreements (IAs) have been executed, and the amount under study for.

(3) The Texas Department of Parks and Wildlife may provide an analysis of wildlife habitat that may be affected by renewable energy development in any candidate zone, and may submit recommendations for mitigating harmful impacts on wildlife and habitat.

(4) In determining whether to designate an area as a CREZ and the number of CREZs to designate, the commission shall consider:

(A) whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;

(B) the level of financial commitment by generators; and

(C) any other factors considered appropriate by the commission as provided by PURA, including, but not limited to, the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone, and the estimated benefits of renewable energy produced in the candidate zone.

(5) The commission shall issue a final order within six months of the initiation by commission staff of a CREZ proceeding, unless it finds good cause to extend the deadline. For each new CREZ it orders, the commission shall specify:

(A) the geographic extent of the CREZ;

(B) major transmission improvements necessary to deliver to customers the energy generated by renewable resources in the CREZ, in a manner that is most beneficial and cost-effective to the customers, including new and upgraded lines identified by voltage level and a general description of where any new lines will interconnect to the existing grid;

(C) an estimate of the maximum generating capacity that the commission expects the transmission ordered for the CREZ to accommodate; and

(D) any other requirement considered appropriate by the commission as provided by PURA.

(6) The commission may direct a utility outside of ERCOT to file a plan for the development of a CREZ in or adjacent to its service area. The plan shall include the maximum generating capacity that each potential CREZ can reasonably accommodate; identify the transmission improvements needed to provide service to each CREZ; and include the cost of the improvements and a timetable for complying with all applicable federal transmission tariff requirements.

(b) Level of financial commitment by generators.

(1) A renewable energy developer's existing renewable energy resources, and pending or signed IAs for planned renewable energy resources, leasing agreements with landowners in a proposed CREZ, and letters of credit representing dollars per MW of proposed renewable generation resources, posted with ERCOT, that the developer intends to install and the area of interest are examples of financial commitment by developers to a CREZ. The commission may also consider projects for which a TSP, ERCOT, or another independent system operator is conducting an interconnection study; and any other factors for which parties have provided evidence as indications of financial commitment.

(2) A non-utility entity's commitment to build and own transmission facilities dedicated to delivering the output of renewable energy resources in a proposed CREZ to the transmission system of a TSP in Texas or a deposit or payment to secure or fund the construction of such transmission facilities by an electric utility or a transmission utility to deliver the output of a renewable generation project in Texas is an indication of the entity's financial commitment to a CREZ.

(c) Plan to develop transmission capacity.

(1) After the issuance of a final order in accordance with subsection (a)(5) of this section, entities interested in constructing the transmission improvements shall submit expressions of interest to the commission. The commission shall select the entity or entities responsible for constructing the transmission improvements, establish a schedule by which the improvements shall be completed, and specify any additional reporting requirements or other measures deemed appropriate by the commission to ensure that entities complete the ordered improvements in a timely manner.

(2) The commission shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ.

(3) In developing the transmission capacity plan, the commission may consider:

(A) the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone;

(B) the estimated cost of additional ancillary services; and

(C) any other factors considered appropriate by the commission as provided by PURA.

(4) No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in the CREZ order as most beneficial and cost-effective to the customers. The commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.

(5) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).

(6) Within 45 days of an application for a CCN for transmission improvements filed pursuant to the order designating the zone a CREZ, each developer for that CREZ shall post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of the estimated capital cost of the transmission improvements covered by the CREZ order, including the TSP's cost of preparing its CCN application. If any developer fails to deposit the required funds, the commission may take appropriate action, including, but not limited to, the following: reconsideration of its CREZ designation; dismissal of the TSP's CCN application; seeking another developer to step into the shoes of a defaulting developer; ordering the return of all deposits to developers who made adequate deposits; ordering the application of the defaulting developer's deposits toward the costs incurred by TSPs pertaining to planning and CCN proceedings for the transmission facilities covered by the order designating the zone a CREZ; and ordering the return of any remaining balance to the defaulting developer.

(7) In evaluating the CCN applications, the commission shall consider the level of financial commitment by generators. The TSP may propose modifications to the transmission improvements described in the CREZ order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.

(d) Obligation to take transmission service in a CREZ.

(1) A developer that deposited funds in accordance with subsection (b)(1) or (c)(6) of this section shall take transmission service in the CREZ no later than one year after the TSP notifies it that the transmission system is capable of accommodating the developer's renewable energy facility, unless the commission approves an extension of time. If the developer does not take transmission service as required, the developer shall be considered to have forfeited, for the benefit of the TSP, all collateral, letters of credit or funds it has deposited.

(2) If the developer completes the generation facilities and begins delivering energy from the CREZ within one year of the completion of the transmission improvements, the TSP and ERCOT shall refund to the developer all collateral, letters of credit or funds it has deposited.

(e) Disincentives for excess development in a CREZ. If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, the commission may initiate a proceeding and limit interconnection to and/or establish dispatch priorities regarding the transmission system in the CREZ, and identify the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes. Priority in interconnecting to the transmission system may be based on a number of factors, including financial commitments of the developers in accordance with subsections (b) and (c) of this section. In determining such priority, the commission may also consider the progress that a developer has made in obtaining the transmission studies required for a new generator interconnection as indications of financial commitment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606740
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: January 4, 2007
Proposal publication date: September 8, 2006
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER AA. COMMISSIONER'S RULES ON COLLEGE READINESS

19 TAC §74.1001

The Texas Education Agency (TEA) adopts new §74.1001, concerning the college readiness vertical team. The new section is adopted without changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9189) and will not be republished. The adopted new section implements the requirements of the Texas Education Code (TEC), Chapter 28, Courses of Study; Advancement, Subchapter A, Essential Knowledge and Skills; Curriculum, §28.008, Advancement of College Readiness in Curriculum, as added by House Bill (HB) 1, 79th Texas Legislature, Third Called Session, 2006. Statute requires the commissioner of education by rule to establish a college readiness vertical team in cooperation with the Texas Higher Education Coordinating Board.

HB 1, 79th Texas Legislature, Third Called Session, 2006, amended the TEC, Chapter 28, by adding §28.008 requiring the commissioner of education and the commissioner of higher education to establish vertical teams composed of public school educators and institution of higher education faculty. The legislation also requires the commissioner of education by rule to establish the composition and duties of the vertical teams in cooperation with the Texas Higher Education Coordinating Board. The primary purpose of the vertical team is to recommend college readiness standards and expectations that address what students must know and be able to do to succeed in entry-level courses offered at institutions of higher education.

Adopted new 19 TAC §74.1001, developed cooperatively with the Texas Higher Education Coordinating Board, establishes provisions for a college readiness vertical team, including the purpose, composition, appointment, and duties. The college readiness vertical team would be comprised of four subject-specific vertical teams, one each to address English language arts, mathematics, science, and social studies.

The TEC, §28.008(d) - (f), requires the State Board of Education (SBOE) to incorporate the college readiness standards into essential knowledge and skills established under the TEC, §28.002. The TEC, §28.008, authorizes the retention of all SBOE authority over required curriculum, and establishes a timeline for integration and implementation.

No comments were received regarding adoption of the proposed new section.

The new section is adopted under the Texas Education Code, §28.008, which requires the commissioner of education by rule to establish, in cooperation with the Texas Higher Education Coordinating Board, the composition and duties of a college readiness vertical team.

The new section implements the Texas Education Code, §28.008.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 18, 2006.

TRD-200606780
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: January 7, 2007
Proposal publication date: November 10, 2006
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TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §§163.2, 163.5, 163.6

The Texas Medical Board (Board) adopts the amendments to §§163.2, 163.5, and 163.6, relating to licensure, without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8061) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a Licensure Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on November 15, 2006. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 8, 2006 regarding the proposed amendments.

The amendments are adopted under the authority of Texas Occupations Code, §153.001 and §155.003(d), which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606681
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: January 4, 2007
Proposal publication date: September 22, 2006
For further information, please call: (512) 305-7016

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CHAPTER 170. AUTHORITY OF PHYSICIAN TO PRESCRIBE FOR THE TREATMENT OF PAIN

The Texas Medical Board (Board) adopts the repeal of §§170.1, 170.2, and 170.3, relating to The Authority of Physicians to Prescribe for the Treatment of Pain and the replacement of §§170.1, 170.2, and 170.3, relating to Pain Management. The repeal and replacement are adopted without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8066) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through a resource group, which met on June 23, 2006. The resource group consisted of pain management specialists, including members of the Texas Pain Society. The resource group commented on a previous proposed rule that had been published in the April 28, 2006 issue of the *Texas Register* (31 TexReg 3470) and withdrawn in the June 23, 2006 issue of the *Texas Register* (31 TexReg 5067). Following the meeting, a revised draft of the proposed rule was distributed to all members of the resource group. The Texas Pain Society submitted a letter dated August 8, 2005, stating that the current draft addressed all of their concerns except for additional suggestions regarding §170.3(a)(6). All of these comments by the resource group were incorporated into the proposed rule as published in the September 22, 2006 issue of the *Texas Register* (31 TexReg 8066). The Board further presented the revised proposal to the Enforcement Stakeholder Group, which made comments at a meeting held on July 25, 2006. The Enforcement Stakeholder Group made no further comments for changes.

The Board received no additional comments on the proposed repeal and replacement and no one appeared to testify at the public hearing on December 8, 2006.

22 TAC §§170.1 - 170.3

The repeals are adopted under the authority of Texas Occupations Code, §153.001 and §107.152, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606682
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: January 4, 2007
Proposal publication date: September 22, 2006
For further information, please call: (512) 305-7016

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CHAPTER 170. PAIN MANAGEMENT

22 TAC §§170.1 - 170.3

The new rules are adopted under the authority of Texas Occupations Code, §153.001 and §107.152, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606683
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: January 4, 2007
Proposal publication date: September 22, 2006
For further information, please call: (512) 305-7016

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CHAPTER 183. ACUPUNCTURE

22 TAC §§183.2, 183.4, 183.5, 183.15, 183.20

The Texas Medical Board (Board) adopts the amendments to §§183.2, 183.4, 183.5, 183.15, and 183.20, relating to Acupuncture, without changes to the proposed text as published in the October 27, 2006, issue of the *Texas Register* (31 TexReg 8818) and will not be republished.

The State Board of Acupuncture Examiners adopted the proposed rules on July 14, 2006. The Board sought stakeholder input through a Licensure Stakeholder Group at a meeting held on November 15, 2006

The Board received no public written comments and no one appeared to testify at the public hearing held on December 8, 2006 regarding the proposed amendments

The amendments are adopted under the authority of Texas Occupations Code, §153.001 and §205.101, which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606684
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: January 4, 2007
Proposal publication date: October 27, 2006
For further information, please call: (512) 305-7016

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CHAPTER 187. PROCEDURAL RULES SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §187.28

The Texas Medical Board (Board) adopts the amendments to §187.28, relating to Procedural Rules, without changes to the proposed text as published in the October 27, 2006, issue of the *Texas Register* (31 TexReg 8820) and will not be republished.

Prior to publishing the proposed amendments, the Board sought stakeholder input through the Enforcement Stakeholder Group, which made comments on the suggested changes to the rules at a meeting held on July 25, 2006. Comments of the Enforcement Stakeholder Group were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on the proposed amendments.

The amendments are adopted under the authority of Texas Occupations Code, §153.001 and §164.007(a), which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606685
Donald W. Patrick, MD, JD
Executive Director
Texas Medical Board
Effective date: January 4, 2007
Proposal publication date: October 27, 2006
For further information, please call: (512) 305-7016

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, §203.6, concerning Provisional Licensees.

The amendment is adopted without change to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8174) and will not be republished.

The amendment allows provisional licensees expeditious access to information relating to the provisional licensing program.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606664
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 3, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 936-2466

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22 TAC §203.22

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, §203.22, concerning Required Documentation for Embalming.

The amendment is adopted without change to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8175) and will not be republished.

The amendment allows provisional licensees expeditious access to information relating to the provisional licensing program.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606665
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 3, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 936-2466

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22 TAC §203.27

The Texas Funeral Service Commission (commission) adopts an amendment to Title 22, §203.27, concerning Sponsors of Provisional Licensees.

The amendment is adopted without change to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8175) and will not be republished.

The amendment allows provisional licensees expeditious access to information relating to the provisional licensing program.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 14, 2006.

TRD-200606666
O. C. Robbins
Executive Director
Texas Funeral Service Commission
Effective date: January 3, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 936-2466

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 57. FISHERIES

SUBCHAPTER M. ARTIFICIAL REEFS

31 TAC §§57.950 - 57.955

The Texas Parks and Wildlife Commission adopts new §§57.950 - 57.955, concerning Artificial Reefs, without changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8200).

In general, the new sections establish a mechanism to govern the deployment of artificial reef materials in coastal waters by private individuals, groups, or associations.

Under Parks and Wildlife Code, Chapter 89, the department is required to promote, develop, maintain, monitor, and enhance the artificial reef potential in the navigable water of Texas and water of the federal fisheries conservation zone adjacent to Texas water. Chapter 89 also requires that artificial reefs be sited, constructed, maintained, monitored, and managed to: enhance and conserve fishery resources to the maximum extent practicable; facilitate access and use by Texas recreational and commercial fishermen; minimize conflicts among competing uses of water and water resources; minimize environmental risks and risks to personal and public health and property; be consistent with generally accepted principles of international law and national fishing law; not create any unreasonable obstruction to navigation; and use the best scientific information available. Additionally, Chapter 89 requires the department to develop and maintain an artificial reef plan and requires all artificial reefs constructed in the state to conform to the plan. The Texas Artificial Reef Fishery Management Plan was adopted by the Texas Parks and Wildlife Commission in 1990.

Since the inception of the program in 1990, the department has created 54 artificial reefs. In 2005, the Texas Legislature enacted House Bill 883, which authorized the department to promulgate rules governing the placement of donated reef materials in a permitted zone by third-party entities.

New §57.950, concerning General Provisions, establishes various requirements and obligations necessary to the proper function of the subchapter. Subsections (a) and (b) prohibit any person from constructing an artificial reef unless the person had entered into a valid Public Reefing Agreement (PRA) with the department. The subsections are necessary to establish the Public Reefing Agreement as the mechanism for the creation of artificial reefs by entities other than the department.

New §57.950(c) establishes that the department may inspect and approve reef units for deployment, verify the location of reef units, and board vessels involved in any activity under a PRA. The provisions are necessary to provide for the proper oversight of the reef construction process. The department must, if necessary, be able to conduct physical and visual inspections of prospective reef materials at any point in the process in order to verify concordance with information submitted in an application for a PRA. Similarly, the department must be able to verify that an artificial reef has been deployed at the location authorized by the PRA.

New §57.950(d) requires that only department-approved reef units are allowed to be deployed. The provision is necessary to prevent the deployment of unapproved reef materials.

New §57.950(e) stipulates that the department will determine the deployment locations for all artificial reefs. The provision is necessary because the department has determined those areas of seabed that are biologically appropriate for artificial reef construction.

New §57.950(f) creates a requirement that deployment of artificial reefs take place only during daylight hours. The provision is necessary primarily because verification of reef materials is much easier in daylight, but also because navigation is much safer in daylight.

New §57.950(g) requires transport vessels to monitor a specific frequency during transport and deployment activities. The provision is necessary to ensure that the department is able to communicate with vessels during operations under a PRA.

New §57.951, concerning Definitions, establishes meanings for specific terms and phrases used in the subchapter. The new section is necessary to establish unambiguous meanings for terms and phrases in order to avoid confusion and misunderstandings.

New §57.952, concerning Applicability of Other Law, clearly states that a PRA does not authorize a person to violate any law, statute, or regulation. The new section is necessary to ensure that prospective PRA cooperators understand that a PRA is not a defense to prosecution.

New §57.953, concerning PRA Application, prescribes an application process and authorizes the department to refuse a PRA on the basis of the failure of proposed reef material to meet criteria established in new §57.955 or a history of noncompliance by the applicant. The new section is necessary to create an efficient method for administering the application process.

New §57.954, concerning Terms of Public Reefing Agreement (PRA), sets forth the elements that must be included in a PRA.

New §57.954(a)(1) requires an applicant to identify the material to be used in a prospective artificial reef. The provision is necessary because the department must ensure that unsuitable materials are not deployed. The best way to accomplish this goal is to require the applicant to identify the reef material in a written document.

New §57.954(a)(2) requires the applicant to identify the staging area (the exact location where the prospective reef material will be immediately prior to departure for deployment). The provision is necessary because the department must inspect and approve all reef material prior to deployment. The most efficient way to do this is to require the applicant to identify in writing a location where the reef material is located.

New §57.954(a)(3) requires the applicant to describe the methods and procedures to be employed in the preparation and deployment of reef materials. The provision is necessary in order for the department to ensure that impacts to the natural environment as a result of preparation and deployment are consistent with standards established by state and federal guidelines for the construction of artificial reefs. The most effective and efficient way to accomplish this goal is to require the applicant to specify, in writing, the methods and procedures to be used.

New §57.954(a)(4) requires the applicant to specify the dates and times of all preparation and transport activities. The provision is necessary so the department can effectively inspect and monitor activities to ensure compliance with the PRA, as well as state and federal laws and guidelines.

New §57.954(a)(5) allows for a 90-day period of validity and a one-time, 90-day extension for activities under a PRA. The provision also allows a PRA to be amended. The provision is necessary to create a specific time frame for the accomplishment of reef construction, but to allow the flexibility for reasonable modifications.

New §57.954(a)(6) requires notification of the department at least 72 hours prior to the departure for deployment activities, to include the identities of all vessels, departure times, routes to the reef site, and estimated time of arrival. The provision is necessary so the department can effectively inspect and monitor activities to ensure that activities under the PRA, as well as state and federal laws and guidelines.

New §57.954(a)(7) requires the submission of Global Positioning System (GPS) coordinates of all deployment sites to the department within five days of deployment. The provision is necessary in order for the department to verify compliance with the PRA and to maintain an accurate database of all reef deployments made or authorized by the department.

New §57.954(a)(8) requires an applicant for a PRA to attest to reading and understanding the provisions of the subchapter and the department publication entitled "The Texas Public Reef Building Program; Standard Operating Protocol and Guidelines." The provision is necessary to preclude any misunderstandings or confusion surrounding an applicant's obligations and responsibilities with respect to artificial reef construction.

New §57.954(a)(9) allows the department to include other stipulations, restrictions, or conditions as necessary in a PRA. The provision is necessary because the wide variety of materials, procedures, methods, and processes that could be used or employed in artificial reef construction may create situations in which generic or blanket approval is impossible.

New §57.954(b) allows the department to require a PRA applicant to supply a reasonable performance bond. The provision is necessary to provide at least partial payment of costs associated with mitigation, restoration, or remediation activities occurring as a result of a failure to abide by a PRA.

New §57.955, concerning Reef Material Criteria, requires all prospective reef material to be free of pollutants or toxins in accordance with applicable laws, of a composition, density, and weight sufficient to prevent disassociation or movement, and configured in a manner that prevents the reef material from trapping marine life when deployed. The new section is necessary to ensure that only clean, safe, and appropriate materials are deployed, that they possess physical characteristics that prevent migration, and that they not pose a physical threat to marine life. The purpose of artificial reefs is to provide habitat enhancement and encourage marine biodiversity. Obviously, the deployment of structures containing pollutants is counterproductive to that purpose, as is the placement of structures that function to entrap marine organisms. Additionally, structures must be heavy and dense enough to prevent easy movement, which could cause the reef to become a navigation hazard.

The new rules will function collectively by establishing a mechanism to govern the deployment of artificial reef materials in coastal waters by private individuals, groups, or associations. The new rules will function specifically by prescribing an application process and the criteria under which the department may

refuse to enter into a reefing agreement; by stipulating the requirements and obligations of persons entering into or seeking to enter into a reefing agreement with the department; by delineating the components of a public reefing agreement; by stipulating the types of materials that may be used, the locations where the reef materials may be deployed, and the methods and procedures that are to be used in the deployment; and by setting forth inspection, verification, and oversight protocols.

The department held two public meetings, solicited public comment via the department website, and accepted comment before the Texas Parks and Wildlife Commission on November 2, 2006.

The department received one comment opposing adoption of the proposed rules. The commenter stated that people should be able to deposit reef materials in an approved zone without divulging the exact location of the deployment to the department. The commenter stated that this would encourage greater private investment in artificial reefs. The department disagrees with the comment and responds that it is necessary to know the exact location of all artificial reefs in order to verify compliance with state and federal laws. The department further responds that the intent of the rules is to incorporate the assistance of private entities in the enhancement of marine habitat for public enjoyment. No changes were made as a result of the comment.

The department received 15 comments supporting adoption of the proposed rules.

The Port Mansfield Reefing Association and the Recreational Fishing Alliance commented in support of adoption of the proposed rules.

The new rules are adopted under Parks and Wildlife Code, Chapter 89, which authorizes the commission to adopt rules and guidelines as necessary to implement the chapter, and to authorize a person to place a donation of reef materials in a permitted zone in accordance with the chapter and commission rules and guidelines.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606700
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: January 4, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 389-4775

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

SUBCHAPTER B. ECONOMICALLY DISTRESSED AREAS FACILITY ENGINEERING

31 TAC §§355.70 - 355.73, 355.75

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§355.70 - 355.73 and 355.75 concerning the Research and Planning Fund, Subchapter B, Economically Distressed Areas Facility Engineering. Section 355.72 is adopted with a change to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8966). Sections 355.70, 355.71, 355.73 and 355.75 are adopted without changes and will not be republished. The amendments are adopted in order to be consistent with recent statutory amendments affecting these and other board rules and proposes to align the requirement therein with other board programs.

The board adopts amendments to §355.70, Definitions. The preamble to this section is amended to incorporate a reference to the definitions of Chapter 16, Subchapter J, of the Texas Water Code, which are also applicable. The board amends paragraph (1), which defines affected county, to delete existing language that limits eligible counties based on per capita income and unemployment and adds language so that an affected county is a county that has an economically distressed area with a median household income not greater than 75% of the median state household income. The board adopts this amendment to be consistent with a statutory amendment made by the House Bill 467 of the 79th Legislature (H.B. 467) which expands eligibility of this program. The board amends paragraph (2), which defines an economically distressed area to be an area that lacks adequate water or sewer service and adequate financial resources to obtain those services, and changes the date the economically distressed area was created from prior to June 1, 1989 to prior to June 1, 2005. The date change captures 16 additional years of eligible areas. This amendment is made in order for the rule to be consistent with a statutory amendment made by the H.B. 467 of the 79th Legislature which expands eligibility of this program. New paragraphs (6) and (7) are added to include a definition for political subdivision and sewer services or sewer facilities in order to implement amendments to the statutes made by H.B. 467.

The board adopts an amendment to §355.71(c), Purpose and Policy, to reflect the statutory change made in a prior legislative session that codified the Texas Professional Engineering Act from Civil Statutes to the Occupations Code.

The board amends §355.72, Criteria for Eligibility, by deleting subsections (a), (b)(4), and (c). Currently, §355.72(a) identifies the process for the board to identify affected counties according to statutory criteria. The statutory criteria were repealed by H.B. 467 and therefore the board deletes the process it has used to identify affected counties. The board amends paragraph (1), which deals in part with obtaining copies of model subdivision rules, by deleting references to obtaining those copies from the Border Project Management Division which no longer exists and, instead making those rules available through the board's website. A direct link is referenced and as a result of public comment the board provides a more accurate link Current subsection (b)(4) requires that a district or water supply corporation that applies for financial assistance obtain the consent of the appropriate county or municipality. House Bill 467 repealed this as a statutory requirement and the board deletes it to be consistent with the statute and in order to streamline the application process. Subsection (c) currently allows projects to maintain eligibility when the criteria identified in subsection (a) changes. The board deletes this subsection due to the deletion of subsection (a).

The board adopts amendments to §355.73, Scope of Facility Plan. The board deletes subsection (a)(1)(A), since this requirement is no longer applicable because H.B. 467 repealed this requirement. The board amends subsection (a)(1)(H) to delete the requirement for household and per capita income information because H.B. 467 changed the income determination from per capita income. In its place, the board inserts the requirement to provide U.S. Census data for median household income for the project area because H.B. 467 requires the use of median household income to establish area eligibility. U.S. Census data is proposed because it is readily available and is currently used in the board's other programs. The board deletes the current provisions of subsection (a)(1)(I) and inserts an option that, in the event that U.S. Census data is not available, the applicant may provide a survey to establish median household income. The board amends subsection (a)(3). This subsection requires an environmental review that complies with the provisions of §363.14, for those projects that are funded solely from state funds projects, or §363.223 or §375.35 for those projects that funded with federal funds projects and subject to a National Environmental Policy Act review. The board deletes the references to §363.223 and §375.35 since these provisions contain the same requirements and, in any event due to amendments to Chapter 375, the appropriate requirements are located in §375.214. The board inserts the reference to §375.214 as the appropriate environmental review requirements for those projects that are funded with federal funds projects and subject to a National Environmental Policy Act review. The board amends subsection (a)(4) to change the reference to an emergency water shortage plan to be a drought contingency plan in order to be consistent with current industry nomenclature. The board amends subsection (a)(5) to delete the requirement to include information regarding consultation with residents to determine the most economical solutions and, additionally, to delete the requirement to provide evidence of individual user commitment to use the system. This amendment is adopted because the statutory requirement to prepare individual household surveys for each project has been repealed by H.B. 467 and is burdensome in the preparation of application without providing additional value to the project. The board amends subsection (a)(6) to adjust the requirement to comply with the statutory amendment made by H.B. 467. The board amends subsection (a)(16) so that it includes the identification of other sources of funds for other activities that the board concludes are significant for project completion. The board corrects the reference in subsection (a)(17) to be to the economically distressed area impact fee authorized by Water Code §17.936. The board deletes (a)(18) in its entirety as a statutory requirement that was repealed by H.B. 467.

The board adopts an amendment to §355.75, Contracts, to better reflect the content of the section. The board changes the section title to Application Approval and Termination. The board adds new §355.75(e) to clarify that inadequate or incomplete planning activities are grounds for termination, and that the board may cure the lack of progress in consultation with the applicant either by performance or new contract. This addition includes statutory authorization provided to the board under Water Code §15.407(j).

The board conducted a stakeholders meeting on the proposed rules on October 27, 2006 in Room 513-F, Stephen F. Austin Building, 1700 N. Congress Avenue, Austin, Texas. No comments were received concerning the proposed changes during the meeting and one comment was submitted afterwards within the prescribed period following the publication of the proposed rules: Steve Niemeyer, Texas Commission on Environmental Quality.

Steve Niemeyer, Policy Analyst and Liaison for Colonia Activities, Texas Commission on Environmental Quality, notes the website reference appearing in proposed §355.72(a)(1) for the electronic version of the model subdivision rules appears to be incorrectly identified, that the proper reference should be http://www.twdb.state.tx.us/publications/rules/rules.asp. *The board accepts the comment and makes the suggested change as a necessary reference to educating potential applicants and the public.*

The amendments are adopted under the authority of the Texas Water Code §6.101 and §15.995 which authorize the board to publish rules to carry out its duties provided in the Water Code and for this program in particular.

Cross reference to statute: Water Code, Chapter 16, Subchapter J and Chapter 17, Subchapter K.

§355.72. Criteria for Eligibility.

(a) Political subdivisions must meet the appropriate requirements of this section before the board may consider an application for financial assistance for facility planning.

(1) A county within which the political subdivision applying for assistance is wholly or partially located must have adopted the model subdivision rules required by the Texas Water Code, §16.343. Copies of the model subdivision rules are available upon request from the Texas Water Development Board, Office of General Counsel, P.O. Box 13231, Austin, Texas 78711 or the board's web site http://www.twdb.state.tx.us/publications/rules/rules.asp.

(2) A municipality which applies for financial assistance or within which a political subdivision applying for assistance is wholly or partially located must have adopted the model subdivision rules required by the Texas Water Code, §16.343, if the economically distressed area to be served is partially or wholly located within the incorporated limits of the municipality.

(3) A political subdivision applying for facility planning assistance must have any required certificate of public convenience and necessity (CCN) that includes the project area and that is for the same type of service to be addressed in the proposed facility planning study; or, as an alternative, the applicant may submit an executed interlocal agreement with the holder of the applicable CCN which authorizes the applicant to provide the applicable services for the facility planning area.

(4) A political subdivision shall have submitted for review:

(A) an annual audit for the most recent fiscal year of the political subdivision and financial statements for the three previous complete months;

(B) the most recent order or resolution establishing the rates and charges for the utility service for which the planning will be performed;

(C) the current capital improvement plan for the utility service for which the planning will be performed;

(D) an executed contract with the consulting engineer to prepare the facility plan and sufficient documentation to establish that the political subdivision complied with §355.77 of this title in procuring the services of the consulting engineer; and

(E) evidence that the county commissioners court has prepared a map showing the part of the county, outside the limits of the municipalities, in which the different types of on-site sewage disposal

systems may be appropriately located and the parts of the county in which the different types of systems may not be appropriately located.

(b) If the applicant is a local governmental entity as defined in the Health and Safety Code, Chapter 366, then before the board provides financial assistance for facility planning, the applicant must provide satisfactory evidence that it has taken and will take all actions necessary to receive and maintain a designation as an authorized agent of the commission as set forth in that chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2006.

TRD-200606650
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Effective date: January 2, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 475-2052

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CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS
SUBCHAPTER E. ECONOMICALLY DISTRESSED AREAS
DIVISION 1. ECONOMICALLY DISTRESSED AREAS PROGRAM

The Texas Water Development Board (the board) adopts amendments to 31 TAC §363.502 and §363.503, the repeal of §363.504 and §363.505 and adopts new §363.504 and §363.505, concerning Financial Assistance Programs, Subchapter E, the Economically Distressed Areas Program. Section 363.502 and §363.503 and new §363.504 and §363.505 are adopted with changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8970). The repeal of §363.504 and §363.505 are adopted without changes and will not be republished. Amendments to these sections are adopted to include and address recent statutory amendments affecting these and other board rules and to align the requirement therein with other board programs.

The board adopts an amendment to §363.502(4)(C), Definitions, to reflect the date change of when economically distressed areas are recognized. The current date is June 1, 1989. The date is June 1, 2005 and would capture 16 additional years of eligibility. This proposal is made in order for the rule to be consistent with a statutory amendment made by the House Bill 467, 79th Legislature (H.B. 467) which expands eligible areas. Additionally, the board adds three new terms identified as §363.502(12) - (14) to clarify and define new terminology referring to tiered projects that have specific funding requirements.

The board adopts changes to §363.503. The board adopts an amendment to the section preamble to change the date that a residential subdivision must be established in order to be eligible for assistance because of the statutory amendments made by H.B. 467. The board adopts amendments to paragraphs (1) and (2) to change specific references to Commission on Environmental Quality (commission) regulations that identify minimum standards for water and wastewater service to a reference to the appropriate commission rules regarding drinking water standards, on-site storage facilities, and organized sewage collection and treatment facilities. This amendment is adopted to allow for changes and consolidation by the commission of its rules without requiring a rule amendment to this section, thus streamlining board procedures and providing current references to applicants. The board adopts amendments to §363.503(3) and (4) to comply with applicable statutory changes, including changing the requirement that the board issue a determination for financial assistance only after finding the area to be served has a median household income not greater than 75% of the median state income. Current determinations are based on finding the area served by a project has an average per capita income that is at least 25% below the state average. Also, the proposal would eliminate the length of time for which the economic data must be compiled from three years to the most recent year. An additional change is adopted to reflect a date change already introduced. These changes are necessary to be consistent with statutory amendments made by the 79th Legislature which helps expand eligibility.

The board repeals §363.504, Facility Engineering Requirements, and adopts new §363.504, Required Application Information. The existing section only identifies one portion of the application that the board needs to evaluate when it receives a request for financial assistance under this subchapter. Since publication the board has made additional editorial changes for clarity and uniformity, including adding extraterritorial jurisdiction as appropriate and changing references from both cities and municipalities to only the later and specifying the details to be included in a facility plan. The board adopts new subsection (a) to fully delineate the minimum contents of an application for financial assistance under this subchapter. Due to the limited availability of funding for eligible projects, the board is adopting new time limitations for the filing of applications under this subchapter. The board concludes that specifically identifying the contents of an application is necessary to insure that all application materials are clearly delineated and applicants are fully aware of information that is necessary to meet the time limit. The board adopts new subsection (a)(1) to identify the minimum information that must be submitted by an applicant for the board to adequately consider whether the appropriate entities have adopted and are adequately enforcing the model subdivision rules as required by Water Code, Chapter 16, Subchapter J, and Chapter 17, Subchapter K. Current board practice has been for the executive administrator to request copies of the residential subdivision regulations and three recently approved plats from the county, and city if appropriate. By this new subsection, the board is emphasizing the importance of receiving this information in a timely and complete manner. The new subsection also includes a new requirement that the chief administrative official provide a sworn statement that the submitted materials comply with the model subdivision rules. This requirement is adopted to place responsibility for compliance on county and city officials rather than the diligence of the board and its staff. By providing this sworn statement, the board will also be placing substantial reliance on these officials by presuming compliance with the model subdivision rules for a period of five years, subject to random verification by the executive administrator. This new subsection also provides a method for the board to provide training for entities that have not had the experience with enforcing the model subdivision rules. The board adopts new subsection

(a)(2) to require a complete facility plan as prepared under board rule and as determined to be substantially complete by the executive administrator. The board adopts new subsection (a)(3) - (9) to require the information that the executive administrator has previously requested in order to clearly specify the minimum requirements under the new procedure, including providing a project schedule, budget and source of funds. The board adopts new subsection (b) to address two circumstances that arise due to the provisions of Local Government Code §232.071, which limits the authority of counties to adopt and enforce the model subdivision rules until a political subdivision within such county has submitted an application for financial assistance under this program and that the county has an economically distressed area as determined by the board. The board adopts new subsection (b)(1) for those instances in which the board has funds available to finance the project contemplated by the political subdivision. This new subsection requires that the applicant submit sufficient information to establish the existence of an economically distressed area and that the executive administrator review the information to determine if it is sufficient for board review. Only complete information will be submitted to the board for its review and only if there is an economically distressed area will the board issue a written determination of that fact. Once that is accomplished, the applicant must submit information on the adoption of the model subdivision rules within 90 days for the application to be processed. The board adopts new subsection (b)(2) for instances when the board does not have funds available to provide financial assistance to political subdivisions under Water Code, Chapter 17, Subchapter K, a political subdivision still may submit the same information and follow the same procedure in order for the county to have the authority to adopt and enforce the model subdivision rules. The remaining application information may be submitted at any time. Since publication the board has made a change to subsection (b)(2)(B) to correct the reference from (a)(2) to (a)(7) to be more accurate.

The board adopts the repeal of §363.505, Applicability, and adopts new §363.505, Application Review and Assistance Conditions. The board repeals the current section because it requires the submission of information required in the facility plan which is now a requirement in new §363.504. The board adopts new subsection (a) to identify specific amounts of funds available for two categories of projects that are eligible for financial assistance under this program. The program has limited amount of funds available and statutory amendments by H.B. 467 have expanded eligibility to receive funds under the program. The board is adopting these amendments to expand the eligibility in order to implement the statutory amendments but also recognize that the funds currently available were provided according to more restricted eligibility criteria. It is the intent of the board to provide funds that are currently available to projects that meet the prior eligibility criteria but only for a limited amount of time. After the time limit, all eligible projects may apply and receive any funds that remain available or any new funding that is made available. To implement this intent, the board adopts new subsection (a) that provides $15 million for projects that have received previous board funding under the program (Tier A projects), $50 million for projects that are eligible for assistance pursuant to the Colonia Wastewater Treatment Assistance Program, a joint assistance program with the United States Environmental Protection Agency (Tier B projects), and any remaining funds in the Economically Distressed Areas Program Account after funding Tier A and B projects are available for all projects eligible for assistance under this subchapter (Tier C projects). The board adopts changes to this portion of the proposed rule, including (a)(1) - (4) based on public comments to better define Tier A projects as those with currently unexpired commitments, to better identify the amounts available, to include other federal programs at the discretion of the board, and to clarify that remaining Tier A and B funds will rollover into the remaining category. Since publication, the board has made additional changes for clarity and as a result of public c comment to better define Tier a, B and C projects by clearly limiting the amounts available and to ensure unexpended amounts can rollover into the next appropriate category. This included adding a new subsection (a)(4). The board adopts new subsection (b) that requires Tier A project applications to be filed with the board no later than the 90th calendar day following the effective date of these rules and Tier B project applications to be filed with the board no later than the 180th calendar day following the effective date of these rules. Tier C projects will be considered by the board on a first-come first-served basis. Since publication the board has made additional changes to clarify facility plan requirements. The board adopts new subsection (c)(1) to authorize the board to provide grant assistance for the planning, easement acquisition, land acquisition and design for projects that provide water or sewer services to economically distressed areas. The board adopts new subsection (c)(2) so that the board may provide assistance for the remaining construction activities only after the executive administrator has approved the work performed for new subsection (c)(1) and in the amount and manner as provided in §363.503. In order to insure that the funds provided by the board are expended in an expeditious manner, the board adopts new subsection (d) which requires applicants that receive financial assistance for construction as defined in new subsection (c)(2) to commence the construction activities for which funds have been provided no later than one year from the date of the commitment. The new subsection allows the board to approve a single three-month extension at the discretion of the board in order for the applicant to commence construction. This new subsection also prohibits the release of unexpended funds that have been committed under new subsection (c)(2) after two years from the date of commitment, subject to the board approving a single six-month extension.

The board conducted a stakeholders meeting on the proposed rules on October 27, 2006 in Room 513-F, Stephen F. Austin Building, 1700 N. Congress Avenue, Austin, Texas. Nine attendees submitted comments during this meeting and three in writing afterwards. The following made comments to board staff either at the meeting or in writing within the prescribed period following the publication of the proposed rules: Steve Niemeyer, Texas Commission on Environmental Quality; Sylvia R. Garcia, Commissioner, Harris County Precinct 2, Houston, Texas; Keith P. Kindle, P.E., Turner Collie & Braden; Ignacio Madera, Jr., Maverick County; Al Groves, Eagle Pass WaterWorks System; Sunny K. Philip, City of La Feria; Nettie Brown, Northridge Acres Homeowners Association; Tomas Rodriguez, Webb County; James R. Elium, III, Olmito Water Supply Corporation; David Garza, City of Pharr; David Abrego, Brownsville Public Utilities Board; and Linda Fernandez, City of Harlingen. A total of twenty-four comments where addressed though the overall number is reduced as staff were able to combine several comments concerning one issue into one comment and response.

Ignacio Madera, Jr., Maverick County representative, asks if the board considered increasing the cost per connection and linking it to a benchmark such as the Consumer Price Index? *At this time the board makes no changes based on these comments.*

The board has instituted a multi-variable matrix of pertinent information that allows evaluation of each application on its unique merit and need.

Nettie Brown, Northridge Acres Homeowners Association representative, comments that as a colonia resident this program has been helpful and thanked the board. *The board thanks the representative for her comment and insight.*

Several stakeholder comments reflect concern regarding the shortened timeline not being realistic for various reasons, including coordination of applications with other sources of funding, permitting, the acquisition of land, and environmental reviews. *The board makes no changes based on these comments. Staff's proposed rules contemplate a bifurcated application process that allows a total of about four-and-three-quarters years during which applicants may comply with all the necessary requirements from inception of a project to completion of construction.*

James R. Elium, III, Manager, Olmito Water Supply Corporation, asks the board to provide a list of definitions and terms to help applicants. *The board makes no changes based on this comment. The board offers pre-application meetings with potential applicants and provides materials explaining each process, including definitions. At these meetings applicants are encouraged to ask questions about any process in order to avoid misunderstandings. Additionally, board staff are often in contact with applicant's representatives to provide regular and continuing guidance.*

James R. Elium, III, Manager, Olmito Water Supply Corporation, notes that certification of subdivision rule enforcement by mayors and/or county judges is difficult and involves a lot of running around, and suggests the board reconsider other official documents as sufficient. *The board makes no changes based on these comments. The board emphasizes compliance with model subdivision rules resides with the applicant, that the sworn statement requirement represents staff reliance on the assertions of the applicant, and that the statement is evidence of compliance for five years. Having a sworn statement attesting compliance allows for more direct enforcement, provides a local knowledge base, and encourages active compliance.*

David Garza, Utility Director, City of Pharr, noting different factors can decide whether a site can or should be acquired, asks if preliminary design can be done at the same time? *The board makes no changes based on this comment because existing rules already allow for the pre-design element to be included.*

David Garza, Utility Director, City of Pharr, suggests the board consider value engineering as a method to save funds and points to the North American Development Bank, the Border Environment Cooperation Commission, and the Environmental Protection Agency for models. This method involves selecting engineers from an approved pool as a way of saving money. *The board makes no changes based on these comments. The board will continue to retain its flexibility to view projects on their merit but reserves the right to investigate this potential option.*

David Garza, Utility Director, City of Pharr, suggests the board considers a reward system for well managed projects. *The board makes no changes based on this comment and retains its flexibility to review projects based on their merit and needs.*

Tomas Rodriquez, Engineer, Webb County, expressing concern that entities already have trouble financing projects and that then having to update facility plans every five years is burdensome, asks whether the board considers financing the updates? *The board makes no changes based on this comment. The board is often constrained by other requirements, particularly when federal funding is a component and must act accordingly and follow similar requirements.*

Tomas Rodriquez, Engineer, Webb County, regarding the training course for officials dealing with subdivision rule compliance, recommends it be made available at various locations rather than having officials travel to Austin. *The board makes no changes based on this comment. Board staff has proposed developing a two-hour video course that would be free to any interested entity to obtain and review at their convenience from any location in the state.*

David Abrego, Brownsville Public Utilities Board representative, asks the board to reconsider benchmarks regarding costs per connection and to provide flexibility regarding bids that are only a little higher than benchmarks, as experience shows that doubt and concerns are raised about finishing projects where bids come in higher than benchmarks and thus discourages entities from pursuing new projects. *At this time the board makes no changes based on this comment. The board has instituted a multi-variable matrix of pertinent information that allows evaluation of each application on its unique merit and need.*

Sunny K. Philip, Manager, City of La Feria, noting that board and entity staff changes can lead to delays' suggests the board have follow-up meetings with applicants to avoid complications as they arise, provide workshops on how to secure funding, and reward good performers. *The board makes no changes based on these comments. Board staff are available to address questions and issues as they arise. Additionally applicants are encouraged to request pre-application meetings to identify issues and raise questions and have them addressed by board staff.*

Ignacio Madera, Jr., Maverick County representative, comments that the one year timeframe during which a grant applicant must use it or lose it appears punitive and asks if the board is imposing the same limits on other programs? *The board makes no changes based on this comment. The one-year timeframe applies only to commencement of construction from the date of commitment of a construction-only loan; in construction-only loans all planning, acquisition, and design have been completed prior to construction-only loan commitment. The board acknowledges not all programs impose similar limits and that an important consideration is that this program deals with awards tending to consist of a larger grant portion than in other programs.*

David Garza, Utility Director, City of Pharr, wonders if there are other time limits? The North American Development Bank and the Environmental Protection Agency allow entities three years to finish a project, a one-year timeframe for completion appears seems constrictive given the coordination necessary for other funding sources and to resolve engineering and land acquisition issues as they arise. *The board makes no changes based on this comment. The rules propose a one-year time period in which to begin construction after receiving a commitment for construction funding and, if needed a one-time three-month extension. Applications may be filed for planning, acquisition, and design funding so that engineering and land acquisition issues might be resolved during this phase and prior to any application for construction funding. From start-to-finish, the board's new economically distressed areas program procedure gives a total of four-and-three-quarters years, compared to North American Development Bank's three years.*

Linda Fernandez, NRS Consulting Engineers representative, comments that a two year commitment with only one six-month extension possible ties the hands of the applicant and the engineers, noting that weather delays, contractor issues, local politics, the boards own employee turnover and any number of other factors often impact such short timeframes, and recommending the board retain flexibility to consider longer extensions. *The board makes no changes based on this comment. The board policy goal is to ensure communities proceed as expeditiously as possible in order to maximize funding on a statewide level. Additionally, the board retains some flexibility with its ability to review and monitor the progress of each project, and act accordingly. The board reiterates that the new process creates two separate commitments: one for planning, acquisition, and design grants, of up to two-and-one-quarter years; and one for construction-only loans, of up to two-and-one-half years. From project inception to completion of construction, the total period if both commitments are given by the board would be a maximum of four-and-three-quarters years.*

Keith P. Kindle, Associate Vice-President, Turner Collie & Braden, suggests clarifying the definitions for Tier A and Tier B projects as the current categories are confusing because many projects described as being on hold in Tier B received Economically Distressed Areas Program funds from the board to complete facility plans and thus overlap with Tier A projects that are defined as projects already receiving has already committed funds. Is the funding of a facility plan considered previously committed funding? *The board is making appropriate changes to §363.505(a) based on this comment.*

Keith P. Kindle, Associate Vice-President, Turner Collie & Braden, regarding acquisition of property before the design phase states that design surveys need to identify existing rights-of-way, easements and other constraints, that this does not occur in the planning phase, that acquisition cannot occur before that portion of the design phase without such detailed survey data, and suggests that the facility plan results in one-time plans followed by design surveys be completed up front. *The board makes no changes based on this comment. The board understands that not all design funds are spent prior to acquisition; the object is to avoid spending funds prematurely.*

Keith P. Kindle, Associate Vice-President, Turner Collie & Braden, recalls a prior statement that the time allotted for facility planning will be three months, that if that is in the proposed rules it is his experience that it will not be adequate. *The board makes no changes based on this comment.*

Sylvia R. Garcia, Harris County Precinct 2 Commissioner, asks the board to consider that entities that have recently expended federal and local matching funds on water and/or wastewater projects or studies be eligible to apply for Tier B-Set Aside funds. *The board makes no changes based on this comment.*

Steve Niemeyer, Policy Analyst and Liaison for Colonia Activities, Texas Commission on Environmental Quality, suggests clarifying what is meant by random verification of compliance with model subdivision rules by adding a new §363.504(b) and renumbering the current proposed subsection (b) as §363.504(c). The new subsection (b) would state that the board will conduct random audits of the information required to show compliance within 30 days of receiving a report that the chief administrative official is not complying with the rules, upon the request of a member of the legislature, or annually. *The board makes no changes based on this comment. The board retains its authority and flexibility to check information at random or upon cause in order to ensure that the purposes of the statute and rules are met.*

Steve Niemeyer, Policy Analyst and Liaison for Colonia Activities, Texas Commission on Environmental Quality, suggests changing proposed §363.504(a)(1)(E) language so that completion of training courses be made mandatory and that the training be required annually. *The board makes no changes based on this comment because the proposed continues to allow flexibility and discretion on the part of the board. Additionally, such training does not have a separate funding mechanism. Training courses are mandatory for those applicable political subdivisions that are new to this program.*

31 TAC §§363.502 - 363.505

The amendments and new sections are adopted under the authority of the Texas Water Code §6.101 and §15.995 which authorize the board to publish rules to carry out its duties provided in the Water Code and for this program in particular.

Cross reference to statute: Water Code, Chapter 16, Subchapter J and Chapter 17, Subchapter K.

§363.502. Definitions of Terms.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Capital component--That component of the existing rate of a provider utility for the applicable utility service used to retire the long term capital debt of the system determined by calculating a monthly average of the existing annual long term capital debt payments of the utility service provider divided by the total number of living unit equivalents (LUE).

(2) Comparable service provider--A service provider that provides the same type of service as the provider utility for the proposed project to a similarly sized population, with a similar treatment capacity, and serving a population that has a similar per capita income based on available census data adjusted pursuant to the calculation set forth in the §371.24(b)(7) of this title (relating to Disadvantaged Community Program through Loan Subsidies) for adjusted median household income.

(3) Default rate--The average monthly number of residential customers that are delinquent in payment in excess of six months for the service provided divided by the average monthly total number of residential customers.

(4) Economically distressed area--An area in which:

(A) water supply or sewer services are inadequate to meet minimal needs of residential users as defined by board rules;

(B) financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) an established residential subdivision was located on June 1, 2005, as determined by the board.

(5) Living unit equivalents or LUE--The number of existing or projected residential rate payer equivalents for the provider utility in the area to be served by a proposed project which is calculated by dividing:

(A) for existing provider utilities, the total historical annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the historical average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for

the project area be less than the number of service connections of the provider utility for the project area; or

(B) for new provider utilities, the total estimated annual water use of the provider utility, which includes the residential, commercial and institutional water use, by the estimated average annual water use of an average residential connection of the provider utility, provided however, that in no event shall the number of LUE's for the project area be less than the estimated number of service connections of the provider utility for the project area.

(6) Long term capital debt--The total amount of outstanding indebtedness of an applicant that at the time the debt was incurred was intended to be repaid over a period longer than one year, the proceeds of such indebtedness being used for the purpose of acquiring, constructing, or improving a water or sewer system or a necessary component to the service, operation, or maintenance of such system, including long term capital leases of real property and provided that leases for personal property are excluded.

(7) Operating entity--(the individuals who compose) the governing body of a provider utility (and the individuals) who are employed by the provider utility to perform the financial, managerial, and technical tasks associated with the operation of the provider utility.

(8) Payment rate--One minus the default rate of a service utility.

(9) Provider utility--The entity which will provide water supply or wastewater service to the economically distressed area.

(10) Regional capital component benchmark--The average capital component of all customers of no less than three comparable service providers.

(11) Regional payment benchmark--The average of the payment rates of no less than three comparable service providers.

(12) Tier A projects--Those projects with unexpired commitments under this subchapter as of the date these rules go into effect and not otherwise identified as either Tier B or Tier C projects.

(13) Tier B projects--Those projects defined pursuant to the grant agreement for assistance program with the United States Environmental Protection Agency and not otherwise identified as either Tier A or Tier C projects.

(14) Tier C projects--Any funds in the Economically Distressed Areas Program Account in excess of the funds available for Tier B projects and not otherwise identified as either Tier B or Tier C projects.

§363.503. Determination of Economically Distressed Area.

To determine that an area is economically distressed, the board shall consider information and data presented with the application or otherwise available to the board to determine that the water or sewer services are inadequate to meet the minimal needs of residential users; that the financial resources of the residential users of the services are inadequate to provide water or sewer services that will satisfy those minimal needs; and that an established residential subdivision was located in the economically distressed area on June 1, 2005.

(1) Water service is inadequate to meet the minimal needs of the residential users of an economically distressed area if the board determines that water service:

(A) does not exist or is not provided;

(B) is provided by a community water system that does not meet drinking water standards established by the commission and set forth in applicable portions of 30 TAC Chapter 290, Subchapter F;

(C) is provided by individual wells, which after treatment, do not meet drinking water standards established by the commission and set forth in applicable portions of 30 TAC Chapter 290, Subchapter F; or

(D) does not meet applicable water quality standards of any other governmental unit with jurisdiction over such area.

(2) Sewer service is inadequate to meet the minimal needs of residential users of an economically distressed area if the board determines that sewer service:

(A) does not exist or is not provided;

(B) is provided by an organized sewage collection and treatment facility that does not comply with the standards and requirements established by the commission and set forth in 30 TAC Chapter 317;

(C) is provided by on-site sewerage facilities that do not comply with the standards and requirements established by the commission and set forth in 30 TAC Chapter 285; or

(D) does not meet applicable wastewater standards of any other governmental unit with jurisdiction over such area.

(3) The financial resources of the residential users of the economically distressed area are inadequate to provide the needed services if the board finds that the area to be served by a proposed project has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available.

(4) An established residential subdivision was located in the economically distressed area on June 1, 2005, if the board determines the following:

(A) either a plat of the area is recorded in the county plat or deed records; or a pattern of subdivision, without a recorded plat, is evidenced by existence of multiple residential lots derived from a common tract with roads, streets, utility easements, or other such incidents of common usage or origin;

(B) at least one occupied residential dwelling existed within the platted or subdivided area on June 1, 2005, and

(C) such other factors as may be determined relevant by the board.

(5) The boundary or limits of a water or sewage project to serve an economically distressed area may be determined by:

(A) a subdivision plat prepared by a registered engineer, whether recorded or not;

(B) a metes and bounds description, natural boundaries, roads, or other natural features that delineate an unplatted area within which a feasible cost-effective project can be developed; or

(C) inclusion of occupied dwellings with inadequate water or wastewater services in close proximity to an economically distressed area delineated as provided above in a project area when such dwellings can be feasibly served by a proposed project within which a feasible cost-effective project can be developed.

§363.504. Required Application Information.

(a) An application for planning, acquisition and design funding shall be in the form and numbers prescribed by the executive administrator and, in addition to any other information that may be required by the executive administrator or the board, the applicant shall provide:

(1) information to establish to the satisfaction of the executive administrator that the county in which the applicant is located

has adopted and is enforcing the model rules adopted by the board pursuant to Water Code §16.343 (model rules) and that, if any part of the project is located within the corporate limits of a municipality or its extraterritorial jurisdiction, the municipality has adopted and enforcing the model rules, including the following information:

(A) A copy of the subdivision regulations adopted by the county and the municipality, if applicable;

(B) From the county and the municipality, if applicable, the lesser of either the three most recently approved residential subdivision plats or all recently approved subdivision plats that are within the jurisdiction of the county, and municipality if applicable; provided however that if a county or municipality has not approved any residential subdivision plats within the last five years, then the county judge and mayor, if applicable, shall submit a notarized statement to such effect;

(C) A notarized statement from the county judge that:

(i) the residential subdivision regulations adopted by the county and submitted with the statement fully incorporate the model rules;

(ii) any residential subdivision plats submitted with this statement fully comply with the county regulations;

(iii) acknowledges if the executive administrator determines that the county is not enforcing the model rules, that all funds provided by the board under this subchapter and committed for projects in the county shall be suspended; and

(iv) such statement shall be considered sufficient to establish compliance with the model rules for five years unless the executive administrator identifies significant violations with the model rules and the county is unable to correct the deficiencies within 90 days of notification of the violations;

(D) If any part of the project is located within the corporate limits of a municipality or its extraterritorial jurisdiction, a notarized statement from the mayor that:

(i) the residential subdivision regulations adopted by the municipality and submitted with the statement fully incorporate the model rules;

(ii) any residential subdivision plats submitted with this statement fully comply with the municipality's regulations;

(iii) acknowledges if the executive administrator determines that the municipality is not enforcing the model rules, that all funds provided by the board under this subchapter and committed for projects in the municipality or its extraterritorial jurisdiction shall be suspended; and

(iv) such statement shall be considered sufficient to establish compliance with the model rules for five years unless the executive administrator identifies significant violations with the model rules and the municipality is unable to correct the deficiencies within 90 days of notification of the violations;

(E) If the county or municipality, if applicable, have only been required or authorized to adopt residential subdivision rules that enforce the model rules within one year of the submission of the application, the executive administrator may require that each member of the applicable governing body:

(i) complete a course of training of not more than two hours on the implementation of the model rules prepared and provided by the executive administrator in a widely available medium at no cost; and

(ii) provide a notarized statement that the member has completed the training.

(2) a facility plan satisfactory in form and in substance to the executive administrator that includes all of the facility engineering data, studies, and analysis described in §355.73(a) of this title (relating to Scope of Facility Plan), and any relevant data or information identified in §355.73(b) as may be requested by the board or the executive administrator.

(3) a proposed project schedule and budget that includes estimated project costs and identifying the source of funds;

(4) a resolution from its governing body which shall:

(A) request financial assistance and identify the amount of requested assistance;

(B) designate the authorized representative to act on behalf of the governing body; and

(C) authorize the representative to submit the application, appear before the board on behalf of the applicant, and submit such other documentation as may be required by the executive administrator or the board;

(5) a notarized affidavit from the authorized representative stating that:

(A) the decision to request financial assistance from the board was made in a public meeting held in accordance with the Open Meetings Act (Government Code, §551.001, et seq.,) and after providing all such notice as required by such Act as is applicable to the applicant or, for a corporation, that the decision to request financial assistance from the board was made in a meeting open to all customers and after providing all customers written notice at least 72 hours prior to such meeting that a decision to request public assistance would be made during such meeting;

(B) the information submitted in the application is true and correct according to best knowledge and belief of the representative;

(C) the applicant has no outstanding judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue of any kind or nature by EPA, the commission, Texas Comptroller, Texas Secretary of State, or any other federal, state or local government or identifying such judgments, orders, fines, penalties, taxes, assessment or other enforcement or compliance issue as may be outstanding for the applicant;

(D) the applicant warrants compliance with the representations made in the application in the event that the board provides the financial assistance; and

(E) the applicant will comply with all applicable federal laws, rules, and regulations as well as the laws of this state and the rules and regulations of the board;

(6) copies of any proposed or existing contracts with any appropriate consultants such as financial advisory, engineering, general counsel and bond counsel services to be used by the applicant in applying for financial assistance or constructing the proposed project. Contracts for engineering services should include the scope of services, level of effort, costs, schedules, and other information necessary for adequate review by the executive administrator;

(7) a citation to the specific legal authority in the Texas Constitution and statutes pursuant to which the applicant is authorized to provide the service for which the applicant is receiving financial assistance as well as the legal documentation identifying and establishing

the legal existence of the applicant as may be deemed necessary by the executive administrator;

(8) if the applicant provides or will provide water supply or treatment or sewer service to another service provider, or receives such service from another service provider, the proposed agreement, contract, or other documentation which legally establishes such service relationship, with the final and binding agreements provided prior to closing; and

(9) documentation of the ownership interest, with supporting legal documentation, of property on which proposed project shall be located, or if the property is to be acquired, certification that the applicant has the necessary legal power and authority to acquire the property.

(b) Pursuant to Local Government Code §232.071, the authority of a county to adopt and enforce the model rules may be subject to a political subdivision within such county submitting an application for financial assistance under Water Code, Chapter 17, Subchapter K. If an economically distressed area is located within such a county, the following rules apply.

(1) If the board has funds available to provide the financial assistance to political subdivisions under Water Code, Chapter 17. Subchapter K, the applicant shall submit:

(A) all information required by subsection (a) except for the information required pursuant to subsection (a)(1) of this section;

(B) upon the determination by the executive administrator that the information provided complies with the requirements of subsection (a)(2) of this section, the board shall consider the information submitted by the applicant;

(C) if the board determines that there is an economically distressed area identified in the county, the board will issue a written resolution finding that such an area exists in the county; and

(D) the applicant must submit the information required by subsection (a)(1) of this section within 90 days of the determination by the board.

(2) If the board does not have funds available to provide financial assistance to political subdivisions under Water Code, Chapter 17, Subchapter K, a political subdivision may submit:

(A) all information required by subsection (a)(2) of this section;

(B) upon the determination by the executive administrator that the information provided complies with the requirements of subsection (a)(7) of this section, the board shall consider the information submitted by the political subdivision; and

(C) if the board determines that there is an economically distressed area identified in the county, the board will issue a written resolution finding that such an area exists in the county.

§363.505. Application Review and Assistance Conditions.

(a) The funds available for projects eligible for financial assistance from the Economically Distressed Areas Program Account under this subchapter are allocated as follows:

(1) up to $15 million for projects that have unexpired commitments under this subchapter, referred to herein as Tier A projects;

(2) up to $50 million for projects that are eligible for assistance pursuant to the Colonia Wastewater Treatment Assistance Program, as defined pursuant to the grant agreement for that assistance program with the United States Environmental Protection Agency, referred to herein as Tier B projects;

(3) any funds in the Economically Distressed Areas Program Account in excess of the funds available for Tier A projects in paragraph (1) of this subsection shall be combined with Tier B projects in paragraph (2) of this subsection; and

(4) any funds in the Economically Distressed Areas Program Account in excess of the funds available for Tier B projects in paragraph (2) of this subsection shall be combined with this fund for all projects eligible for assistance under this subchapter, herein referred to as Tier C projects.

(b) An application for construction funding shall include all the requirements in subsection (a) above as well as a facility plan satisfactory in form and in substance to the executive administrator that includes all of the facility engineering data, studies, and analysis described in §355.73(a) of this title (relating to Scope of Facility Plan), and any relevant data or information identified in §355.73(b) as may be requested by the board or the executive administrator. To receive financial assistance as a Tier A project an application must be filed no later than the 90th calendar day following the effective date of these rules. An application to receive financial assistance as a Tier B project must be filed no later than the 180th calendar day following the effective date of these rules. An application for all other projects will be considered by the board on the basis in the order that an administratively complete application, as determined by the executive administrator, is filed with the board.

(c) The board may provide financial assistance from the Economically Distressed Areas Program Account for the following construction activities as defined in Water Code §17.001(8):

(1) The board may provide financial assistance for which no repayment is required for costs necessary to provide water or sewer services to economically distressed areas for the following activities:

(A) preliminary planning to determine the feasibility of a water supply project, treatment works, or flood control measures;

(B) engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions; and

(C) the expense of any condemnation or other legal proceedings associated with real property acquisitions;

(2) upon approval by the executive administrator of the completion of activities identified in paragraph (1) of this subsection, the board may provide financial assistance in the amount and manner provided in §363.503 of this title (relating to Determination of Economically Distressed Area) for costs necessary to provide water or sewer services to economically distressed areas for the following activities:

(A) construction including erecting, building, acquiring, altering, remodeling, improving, acquiring or extending a water supply project or water services, treatment works or sewer services or facilities; and

(B) the inspection or supervision of any of the items listed herein.

(d) Applicants receiving funds committed under subsection (c)(2) of this section shall commence the construction activities for which funds have been provided no later than one year from the date of the commitment made by the board; provided however, the board, in its sole discretion, may approve a single three-month extension. No unexpended funds that have been committed under subsection (c)(2)

of this section shall be provided to an applicant two years from the date of commitment; provided however, the board, in its sole discretion, may approve a single six-month extension.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2006.

TRD-200606648
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Effective date: January 2, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 475-2052

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31 TAC §363.504, §363.505

The repeal is adopted under the authority of the Texas Water Code §6.101 and §15.995 which authorize the board to publish rules to carry out its duties provided in the Water Code and for this program in particular.

Cross reference to statute: Water Code, Chapter 16, Subchapter J and Chapter 17, Subchapter K.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2006.

TRD-200606649
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For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 81. INSURANCE

34 TAC §81.11

The Employees Retirement System of Texas (ERS) adopts amendments to 34 Texas Administrative Code §81.11, concerning Termination of Coverage and sanctions for insurance program violations, without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8975) and will not be republished.

The adopted amendments to §81.11(a)(1) and (4) clarify the rule's application to reinstatement of coverage for a surviving spouse or dependent, and it continues to comport with current procedures. The adopted amendments to §81.11(c)(2) make the rule consistent with Texas Insurance Code §1551.351(d), which states that any sanction imposed for a violation of the statute is not stayed during an appeal. The adopted amendments also clarify that participants may appeal denials related to the payment of claims as permitted by ERS and which is currently permitted under Chapter 1551. The adopted amendment to §81.11(c)(3) makes the rule consistent with Texas Government Code §815.102(b) and also with ERS rule §67.1(b), which states that Chapter 67 shall exclusively govern the procedure for all proceedings before the Board, its designee or ERS where notice and hearing are required.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Insurance Code, §1551.052 which gives the Board of Trustees the authority to adopt rules it considers necessary to implement the chapter and its purposes.

The adopted amendments do not affect any other statutes, articles or codes beyond Chapters 1551, Texas Insurance Code and 815, Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606763
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Effective date: January 4, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 867-7421

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.87, §91.88

The Texas Youth Commission (the commission) simultaneously adopts amendments to §91.87 and §91.88, concerning health care services for youth who may be at risk for suicide, with changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8976).

Changes to the proposed text of §91.87 consist of updating the reference to §97.23, which was renamed and adopted in the October 27, 2006, issue of the *Texas Register* (31 TexReg 8848).

Changes to the proposed text of §91.88 consist of minor terminology revisions and clarifications made in response to public comments as noted below.

The justification for amending sections is the protection of youth that may be at risk of suicide.

The amendment will allow a mental health professional to authorize the return of youth that may be at risk of suicide to the general population, with specific instructions concerning the necessary observation level until the mental health professional conducts a face-to-face suicide risk assessment within 72 hours.

The commission received public comments from Advocacy, Incorporated in Austin, Texas, regarding the proposed amendment to §91.88. The comments are summarized below, followed by the commission's response.

Comment: Advocacy, Inc. strongly recommends an individual treatment plan be developed or revised for any youth who expresses or has expressed suicidal ideation. Advocacy, Inc. also urges the commission to use language from the National Commission on Correctional Health Care Standards for Health Services in Juvenile Detention and confinement facilities on suicide prevention and risk management, which states that a "treatment plan should be developed by the mental health staff in conjunction with the patient to address relapse prevention and initiate a risk management plan."

Response: The commission adopts language consistent with the National Commission on Correctional Health Care Standards which will specify the development of a *treatment plan* to replace current language referring to a *plan of treatment*. Additionally, the commission will clarify that the current procedure includes meeting with the youth ("patient" above) to develop a treatment plan which will address relapse prevention. The commission further will state that the treatment plan must identify specific objectives to be incorporated in the youth's individualized case plan.

Comment: Advocacy, Inc. strongly urges the commission to implement the National Commission on Correctional Health Care Standards for Health Services in Juvenile Detention and confinement facilities standards on care on suicide prevention which suggests 12 enumerated components.

Response: The commission provides training for new employees and annual renewal training for existing employees in accordance with American Correctional Association (ACA) Standards. The commission will review the above-referenced standards and evaluate whether agency training addresses each of the 12 areas identified by the National Commission on Correctional Health Care Standards. Any area identified requiring additional training modules or enhancements will be incorporated into the commission's training.

The amendments are adopted under the Human Resources Code, §61.075 and §61.076, which provide the commission with the authority to order a child's confinement under conditions it believes best designed for the child's welfare and the interests of the public provide conditions it believes best designed for the child's welfare and the interests of the public; and to provide any medical or psychiatric treatment that is necessary.

§91.87. Suicide Alert Explanation of Terms.

(a) Purpose. The purpose of this rule is to establish explanations of terms used pursuant to §91.88 of this title relating to suicide alert for secure programs, §91.89 of this title relating to suicide alert for non-secure programs, and §91.90 of this title relating to suicide alert for parole which establish procedures for the identification, assessment, treatment, and protection of youth who may be at risk for suicide.

(b) Explanation of Terms Used.

(1) Secure Program--A TYC institution or contract program which contains a security unit.

(2) Non-Secure Program--A TYC institution or contract program which does not contain a security unit.

(3) Mental Health Professional (MHP)--An individual who is a Psychiatrist, doctoral level Psychologist, masters level Associate Psychologist, Licensed Professional Counselor, or a Licensed Social Worker with an Advanced Clinical Practitioner (LMSW-ACP) designation. Prior consultation with and the signature of the DMHP is not necessary for a licensed doctoral level Psychologist acting as an MHP who determines that a change in SA status or observation/precaution level is warranted. The licensed doctoral level psychologist shall inform the DMHP of any such changes in youth status.

(4) Designated Mental Health Professional (DMHP)--In TYC institutions, the DMHP shall be a Psychiatrist or a doctoral level Psychologist and is the individual that has the primary responsibility and accountability for the evaluation, monitoring, and treatment of a youth referred as a suicide risk. Where available, the director of clinical services is the DMHP.

(5) Trained Designated Staff--Staff trained to conduct a Suicide Risk Screening. In TYC programs this will include superintendent, assistant superintendent, administrative duty officer (ADO), program administrator (PA), institution placement coordinator (IPC), principal, caseworker, and Juvenile Corrections Officer (JCO) V or VI. A JCO V or VI may only conduct a suicide risk screening during the late night shift in secure programs. JCO staff in TYC halfway houses may not conduct suicide risk screenings.

(6) Appropriate Administrator--The highest level local administrative authority in non-secure programs.

(7) Suicide Alert-Pending (SA-P)--A temporary status that begins with the identification of a potentially suicidal youth, by staff, and terminates after a suicide risk assessment by an MHP.

(8) Suicide Alert (SA)--A status that begins following a face-to-face suicide risk assessment by an MHP indicating that a youth is at risk to attempt suicide or self-injury and is in need of increased supervision.

(9) Overt Suicide Behavior--A physical act or stated intention associated with a potentially dangerous or life threatening outcome or imminent risk of serious self-injury. The behavior itself may lack the immediate danger, but accidental risk of death or serious injury is likely. Examples of overt suicidal behavior include, but are not limited to, jumping from heights with intent to cause injury, serious and repeated head banging, tying a ligature around the neck, suffocation, medication overdose, serious self-mutilation requiring nursing or medical care (e.g., near major veins or arteries), or stated intent to commit suicide with a specific plan to seriously harm self.

(10) Non-Lethal Suicide Behavior--The superficial self-injury, or sudden change in behavior suggesting risk of self-injury. For example, the youth may display vegetative symptoms of depression, verbalize a non-specific suicide plan, place an object loosely around the neck, or engage in superficial self-injurious behavior, without imminent risk of harm.

(11) Suicide Risk Screening--A standardized face-to-face interview by an MHP or trained designated staff in consultation with an MHP, to determine the placement of youth in security intake or general population.

(12) Suicide Risk Assessment--A clinical face-to-face interview conducted by an MHP for the determination of suicide risk. The youth participates in the interview and has an opportunity to make his/her own statement. The assessment is required for removal of SA-P

status, placement on SA status, continuation of SA status, removal of SA status, or admission and extensions to protective custody.

(13) Protective Custody--A segregation program in secure programs designed for the placement of youth, as determined by an MHP, who are at risk of serious harm to themselves, and confinement is necessary to protect the youth from self-harm. A youth may be admitted to protective custody only if the youth has received a face-to-face assessment by an MHP.

(14) Secure Observation Area--A location in the security unit, infirmary, or other secure area where staff may visually check youth to ensure safety.

(15) Suicide Levels of Observation--Levels of observation, which are automatically assigned by policy or determined by an MHP to ensure youth safety. Levels of observation are:

(A) One-to-One (1:1) Observation--At a minimum, an assigned staff is within five (5) feet and youth is within sight of staff at all times. The staff will not be assigned other concurrent duties and must be formally relieved of the duty by another staff or by the discontinuation of the 1:1 status. Doors to individual rooms shall remain unlocked for youth on SA 1:1 observation, except when a youth presents an imminent danger to staff due to aggressive behavior. Procedures for obtaining approval to lock the door for such behavior are set forth in §91.88 of this title.

(B) Constant Observation--Youth is within sight of an assigned staff at all times. The staff may have concurrent duties if the duties do not interfere with observation of the youth. Other staff may assist in visual observation of the youth.

(C) Close Observation--Youth is visually checked at least once every ten (10) minutes. Staff may be involved in concurrent duties that allow for the flexibility needed to check the youth. This level of observation may be assigned to youth in the general population, but may not be applied to youth in the security unit or in the Corsicana Stabilization Unit (CSU) where youth are visually checked every three (3) minutes for overt suicidal behavior and every five (5) minutes for non-lethal suicidal behavior.

(16) Minimum Dorm Precautions--A youth on SA-P or SA status on a dorm shall be monitored by staff according to the level of observation. These youth should have reduced or monitored access, approved by the MHP, to potentially dangerous objects such as clothing (e.g., belts, hair accessories, bath robe, bras, belts, shoes/shoe laces), personal hygiene items (e.g., razors) or chemical cleaning agents (e.g., bleach, cleaning solvents), and have a system to ensure constant observation by staff, unless the level of observation is reduced by an MHP. Youth must sleep in direct sight of staff. This may involve sleeping on a mattress pulled in front of staff desk, sleeping in a day area in direct view of staff, sleeping on a bunk/bed in direct sight of staff, or any other appropriate method of supervision. In consultation with the principal and/or assistant principal, the youth will have monitored or restricted access to vocational instruction, or on campus employment, or any other location where there is access to potentially lethal and/or harmful objects/machinery. Youth may not participate in off-campus employment or privileges except for medical treatment or court hearings.

(17) Minimum Secure Observation Area Precautions--A youth on SA-P or SA status in a secure observation area other than the security unit shall be monitored by staff according to the level of observation. These youth should have reduced or monitored access, approved by the MHP, to potentially dangerous objects such as clothing (e.g., belts, hair accessories, bath robe, bras, belts, shoes/shoe laces), personal hygiene items (e.g., razors) or chemical cleaning agents (e.g., bleach, cleaning solvents), and have a system to ensure constant observation by staff, unless the level of observation is reduced by an MHP. Youth in secure observation areas must sleep in direct sight of staff. This may involve sleeping on a mattress pulled in front of staff desk, sleeping in a day area in direct view of staff, sleeping on a bunk/bed in direct sight of staff, or any other appropriate method of supervision. The youth may not participate in off-campus education, employment or privileges without the approval of the MHP except for medical treatment or court hearings.

(18) Minimum Security Precautions for Secure Programs.

(A) Non-Lethal Suicide Precautions--A youth is admitted to security intake according to §97.37 of this title relating to security intake, or protective custody according to §97.45 of this title, and is visually checked once every five (5) minutes by staff. The room is secured by security staff for safety prior to placement and checked for safety every shift or as needed between periods of movement to ensure youth safety. Staff reduces access to potentially dangerous objects (e.g., limited or controlled/supervised access to plastic eating utensils, bed linens), issues suicide safe bedding (e.g. use of suicide blanket). Access to razors is approved by the MHP and visually monitored by staff. Standard suicide precautions are implemented for any youth referred for non-lethal suicide behavior or for a youth who originally engaged in overt suicide behavior but who has stabilized to the point that a reduction in precaution is indicated. The precautions may be modified, by telephone consultation or following a face-to-face suicide risk assessment, by an MHP.

(B) Overt Suicide Precautions--A youth is admitted to security intake according to §97.37 of this title relating to security intake, or protective custody according to §97.45 of this title, or a secure observation area, or the infirmary and is visually checked once every three (3) minutes by staff or, if necessary, placed on one-to-one (1:1) or constant observation. For youth who engage in overt suicide behavior as defined in this policy, staff will:

(i) issue protective clothing (e.g., disposable paper gown, suicide barrel, etc.). Staff verbally instructs youth to put on protective clothing and to remove any undergarment. In accordance with §97.23 of this title use of force may be initiated, but only as a last resort. Staff must consult with the facility administrator and/or MHP regarding alternative interventions that do not involve physical restraint. When manual or mechanical restraint is employed, at least one (1) staff conducting the restraint must be the same gender as the youth. Staff provides repeated opportunities during the restraint for youth to remove own clothing. If there is no same gender staff available, the youth remains on one-to-one (1:1) observation until such staff is available.

(ii) implement other security precautions, including:

(I) suicide safe bedding (e.g. suicide blanket); and

(II) where available, placement in a suicide safe room (e.g., no bed frame or toiletry in room, video camera, etc.) which is checked for safety every shift or as needed between periods of movement; and

(III) placement on a "finger food" diet to ensure youth safety; and

(IV) access to razors only if approved by the MHP and visually monitored by staff.

§91.88. Suicide Alert for Secure Programs.

(a) Purpose. The purpose of this rule is to establish procedures for the identification, assessment, treatment, and protection of youth

that may be at risk for suicide. Treatment will be provided within the least restrictive environment necessary to ensure safety.

(b) Applicability.

(1) This rule applies to all youth currently assigned to placement in Texas Youth Commission (TYC) institutions and secure contract programs.

(2) Definitions pertaining to this rule are under §91.87 of this title.

(3) If a youth is admitted to protective custody following a face-to-face assessment by a mental health professional (MHP), this rule must also be applied in conjunction with §97.45 of this title relating to protective custody.

(c) Initial Identification of Youth at Risk for Suicide.

(1) Any staff hearing or observing a youth engage in or verbalize non-lethal or overt suicide behavior must immediately respond in a manner that protects youth safety. Staff will immediately seek medical attention for youth if necessary. Staff must provide minimum dorm precautions to prevent dangerous or potentially dangerous behavior, which includes constant observation and confiscating materials which could potentially be used for self-injury.

(2) A youth in general population who has engaged in or verbalized suicide behavior must be referred to security intake according to the procedures in §97.37 of this title and immediately placed on Suicide Alert Pending (SA-P). The youth is placed on overt suicide security precautions upon arrival to security intake.

(3) A youth in a segregation program who has engaged in or verbalized suicide behavior will be immediately placed on Suicide Alert-Pending (SA-P) with overt suicide precautions.

(4) An MHP and a trained designated staff approved to conduct suicide risk screenings are contacted immediately.

(5) A face-to-face suicide risk screening will be initiated within one (1) hour of referral to security intake by a trained designated staff or an MHP. An MHP will make a decision, based on a clinical determination of risk and the suicide risk screening, whether the youth will temporarily remain in security intake or be released to the general population.

(6) An MHP will conduct a face-to-face suicide risk assessment to determine suicide alert (SA) status and treatment/placement options.

(d) Temporary Placement of Youth Following a Suicide Risk Screening. Prior to a face-to-face suicide risk assessment, the following two (2) temporary placement options are available to an MHP after a trained designated staff conducts a suicide risk screening:

(1) Retain Youth in Security Intake. Youth who have engaged in overt suicide behavior must be retained in security intake. Youth who have engaged in non-lethal suicide behavior may also be retained in security intake, at the discretion of an MHP.

(A) Youth will continue on SA-P status. An MHP will determine the suicide level of observation and minimum security precautions.

(B) For youth engaging in overt suicidal behavior, the MHP must conduct a face-to-face suicide risk assessment within three (3) hours of referral to security intake.

(C) Youth engaging in non-lethal suicide behavior are maintained in security intake up to 24 hours after referral, pending a face-to-face assessment by an MHP.

(2) Return Youth to General Population. Return to general population is available only for youth who have engaged in non-lethal suicide behavior.

(A) Youth will continue on SA-P status on, at a minimum, constant observation.

(B) Dorm staff will monitor the youth according to minimum dorm precautions.

(C) The MHP will monitor youth's mental status by consulting with appropriate staff at least every 24 hours.

(D) The MHP will conduct a face-to-face suicide risk assessment within 72 hours of initial referral to security intake.

(3) If a youth on SA-P at any time displays behavior suggesting deterioration in emotional condition, appropriate actions will be taken to ensure the youth's safety, which may include re-admission to security intake if the youth has been returned to the general population. The MHP is immediately advised of the change in the youth's condition.

(e) MHP Face-to-Face Suicide Risk Assessment.

(1) Based on the face-to-face suicide risk assessment with the youth, an MHP determines whether to place the youth on SA. An MHP may do one of the following:

(A) remove the SA-P status;

(B) place the youth on SA status and assign a level of observation, which may include admission to protective custody. If a youth is admitted to protective custody, this policy must be read in conjunction with (GAP) §97.45 of this title;

(C) seek emergency psychiatric placement if the youth is in serious imminent risk of self-injury and cannot be safely managed in protective custody. The MHP, in consultation with the Designated Mental Health Professional (DMHP) or contract psychiatrist, places the youth on one-to-one (1:1) observation and seeks placement in the following order:

(i) the Corsicana Stabilization Unit (CSU);

(ii) the nearest MHMR hospital; or

(iii) as a last resort, a private psychiatric hospital.

(D) admit the youth to the infirmary with 1:1 observation if no other options are available, or there are compelling medical reasons.

(2) An MHP, in consultation with the DMHP, develops a treatment plan in conjunction with the youth to manage the youth's suicide risk and address suicide relapse prevention. The plan includes the monitoring of youth on SA status and regular individual counseling and assessment sessions until youth is removed from SA, and relapse prevention objectives for dorm and case management. The plan also includes consultation with the youth's direct care staff, caseworker, and/or program administrator.

(f) New Suicidal or Aggressive Behavior of Youth on SA Status.

(1) When a youth on SA in the general population is referred to security intake for engaging in or verbalizing a new non-lethal or overt suicide behavior, an MHP will conduct a face-to-face suicide risk assessment to determine SA status and treatment/placement options.

(2) When a youth on SA in protective custody on non-lethal precautions engages in or verbalizes overt suicide behavior, the youth

is placed on overt suicide precautions and the on-call MHP is immediately contacted by telephone with a description of the new behavior in order to determine the level of observation and minimum security precautions.

(3) When a youth on SA on (1:1) observation in protective custody or in CSU presents an imminent danger to staff due to aggressive behavior, the youth's room door may be locked provided that the MHP conducts a face-to-face assessment and determines (in consultation with the DMHP) that locking the door is necessary to contain the youth's aggressive behavior and still allows adequate supervision to ensure the youth's safety.

(g) Removal of Youth from SA Status.

(1) The MHP who is assigned to the youth on SA status may, with prior consultation with the DMHP, remove the SA status.

(2) The DMHP may remove a youth from SA status or modify the level of supervision upon a face-to-face interview with the youth.

(h) Release of Youth on SA Status in Security Unit. The MHP who is assigned to the youth on SA status in protective custody may, with prior consultation with the DMHP, release a youth from protective custody to the general population, and reduce the level of observation of the youth on SA if deemed appropriate.

(i) Transfer of Youth on SA Status.

(1) Youth who are on SA status may not be moved to another placement unless:

(A) the receiving placement is a TYC institution or residential treatment center, or other placement having on-site psychiatric staff who may function as an MHP; and

(B) the DMHP at the sending site approves and coordinates the transfer of the youth and clinical responsibilities in consultation with the DMHP at the receiving site.

(2) Youth who transfer from one facility to another must receive a suicide risk assessment from the receiving facility, within 72 hours of arrival if:

(A) youth is on SA or SA-P status; or

(B) youth has history of suicide behavior within the past six (6) months.

(j) Notification.

(1) Every TYC facility and secure program develops a system of notification of key personnel to identify youth on SA or SA-P.

(2) Facility staff shall notify the parent or guardian of a youth placed on SA as a result of overt suicide behavior and when the youth is removed from SA.

(3) Appropriate Central Office staff will be notified of life threatening suicide attempts or completed suicide.

(k) Training. All direct care staff in TYC facilities and in secure programs will receive initial suicide prevention training and annual updates. Staff designated to conduct suicide screenings receive training from an MHP regarding suicide alert policy, suicide indicators, and suicide screening.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 13, 2006.

TRD-200606642
Dwight Harris
Executive Director
Texas Youth Commission
Effective date: January 2, 2007
Proposal publication date: November 3, 2006
For further information, please call: (512) 424-6301

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CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.45

The Texas Youth Commission (the commission) adopts an amendment to §97.45, concerning security and placement of youth, without changes to the proposed text as published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 8978).

The justification for amending the section is the protection of youth that may be at risk of suicide.

The amendment will allow the door of the security room to be locked when the youth presents a physical threat to staff.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which affords the commission with the authority to provide conditions it believes is the best interests of the youth's safety.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 451. VETERANS COUNTY SERVICE OFFICERS ACCREDITATION

40 TAC §451.3

The Texas Veterans Commission (commission) adopts an amendment to 40 TAC §451.3, relating to General Provisions. The amendment is adopted without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8081) and will not be republished.

The amendment will make a minor non-policy affecting change to Chapter 451, Veterans County Service Officers Accreditation, to correct the citation to a Department of Veterans Affairs (VA) form. Specifically, §451.3(h) is amended to reflect the change of VA Form 2-21 to VA Form 21 Application for Accreditation as a Claims Agent. The amendment of §451.3(h) is intended to bring the rule into conformity with the associated minor change in 38 C.F.R. §14.629.

There were no comments received on the amendment.

The amended rule is adopted under Government Code, Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tina Coronado
General Counsel
Texas Veterans Commission
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For further information, please call: (512) 463-1981

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CHAPTER 452. ADMINISTRATION GENERAL PROVISIONS

40 TAC §452.1

The Texas Veterans Commission (commission) adopts an amendment to 40 TAC §452.1, relating to Charges for Copies of Public Records. The amendment is adopted without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8081) and will not be republished.

The adopted amendment will make a minor non-policy affecting change to Chapter 452, Administration General Provisions, to correct the reference to the General Services Commission. Specifically, §452.1 is amended to change the name of the "General Services Commission" to its current title of the "Texas Building and Procurement Commission."

There were no comments received on the amendment.

The amended rule is adopted under Government Code, Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tina Coronado
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Texas Veterans Commission
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CHAPTER 453. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

40 TAC §453.1

The Texas Veterans Commission (commission) adopts an amendment to 40 TAC §453.1, relating to the Historically Underutilized Business Program. The amendment is adopted without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8082) and will not be republished.

The proposed amendment will make a minor non-policy affecting change to Chapter 453, Historically Underutilized Business Program, to correct the references to the General Services Commission and the E.O. Thompson State Office Building. Specifically, §453.1 is amended to change the name of the "General Services Commission" to its current title of the "Texas Building and Procurement Commission." Additionally, §453.1 is amended to reflect the relocation of the commission from the E.O. Thompson State Office Building to the Stephen F. Austin Building.

There were no comments received on the amendment.

The amended rule is adopted under Government Code, Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Veterans Commission
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CHAPTER 454. GRANTS

40 TAC §§454.1 - 454.6

The Texas Veterans Commission (commission) adopts new Chapter 454, concerning "Grants," which will be located in Title 40, Part 15, of the Texas Administrative Code. Chapter 454 will include §454.1, "Grant Conditions;" §454.2, "Grant Officials;" §454.3, "Evaluating Project Effectiveness;" §454.4, "Retention of Records;" §454.5, "Grant Management;" and §454.6, "Remedies for Noncompliance." Chapter 454 is adopted without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8082) and will not be republished.

The purpose of Chapter 454 is to establish procedures for the commission to manage grants made by the commission to outside entities. These rules are required in accordance with §403.108(c) of the Texas Government Code to allow the commission to make grants to local communities to address veterans' needs.

There were no comments received on the new chapter.

The new chapter is adopted under Government Code, Chapter 434, §434.010, which authorizes the commission to adopt rules it considers necessary for its administration, and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tina Coronado
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL POLICY

The Texas Department of Transportation (department) adopts the repeal of §§2.1 - 2.4, concerning comprehensive policy on the environment, the repeal of §2.40, purpose, §2.41, definitions, §2.42, federal-aid transportation projects, §2.43, non federal-aid transportation projects, §2.45, emergency action procedures and compliance with other regulations, §2.46, special right-of-way acquisitions, §2.47, maintenance programs and actions, §2.49, rail transportation projects, and §2.50, financial assistance for toll facilities and pass-through toll projects, and simultaneously adopts new Subchapter A, §§2.1 - 2.20, environmental review and public involvement for transportation projects. New §§2.5, 2.9, and 2.11 are adopted with changes to the proposed text as published in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8466). The repeal of §§2.1 - 2.4, 2.40 - 2.43, 2.45 - 2.47, 2.49, and 2.50, and new §§2.1 - 2.4, 2.6 - 2.8, 2.10, and 2.12 - 2.20 are adopted without changes to the proposed text as published in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8466) and will not be republished.

EXPLANATION OF ADOPTED REPEALS AND NEW SECTIONS

The repeals and new sections restate the rules on the department's environmental processing of transportation projects. The new sections reorganize the rules, including consolidating the provisions on policy. There are separate sections for the distinct parts of environmental processing, for example, the classification of a project, coordination with other agencies, and public involvement. And the requirements under each part of processing (e.g. public involvement) are in chronological order. When this preamble explains that a section "restates" the requirements in the repealed rules, it means the requirements are the same compared to the repealed sections, but the provisions have been reorganized to make them easier to use.

The reorganization also facilitates the department's implementation of federal law. Later in the preamble it describes how the rules implement the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-059)(SAFETEA-LU). There are numerous new requirements concerning processing an environmental impact statement including the preparation of a coordination plan. The sections on coordination with other agencies and on public participation provide logical places to add the new requirements.

The new sections implement new law, including SAFETEA-LU, as described later in this preamble. In some instances there are additional changes, compared to the repealed rules, and those changes are described later in this preamble. The new sections implement the requirements concerning environmental processing for a federal-aid project in 23 C.F.R. part 771, and satisfy Transportation Code, §201.604, that the department provide by rule for the environmental review of the department's transportation projects that are not subject to review under the National Environmental Policy Act.

New §2.1, General; Emergency Action Procedures, includes subsections on policy, applicability, the definition of "transportation project," purpose, other applicable environmental law, and emergency action procedures, that consolidate and restate the provisions in the repealed rules. Subsection (d) specifies that the environmental processing for a project must also comply with the requirements in Subchapter C if applicable. This is a reference to the rules remaining in Subchapter C that are not adopted for repeal in this rulemaking. Subsection (f) specifies that the meaning of "district" is broad as used in the new rules. Sometimes a project sponsor will not be the district within whose geographical boundaries the project lies. For example, the department office responsible for an airport project is the aviation division. Continuing with the example, when the rules specify that the "district" shall take certain actions concerning the project, it shall mean the aviation division.

New §2.2, Definitions, defines terms used in the chapter. In many instances the definitions are the same compared to the repealed rules. The terms "action" and "maintenance action" are deleted because the new rules do not use them. The section includes new terms, for example, "EIS," "de minimis," "need and purpose," "preliminary design," and "transportation enhancement." The terms were added so that the reader may

more easily understand the rules, or to define new terms not in the repeals.

New §2.3, Federal-Aid Transportation Project, restates the requirements in repealed §2.42. Subsections (c) and (e) add new provisions, and allow the department to implement portions of SAFETEA-LU. New subsection (c) recognizes that the Federal Highway Administration (FHWA) and the department may enter into a memorandum of agreement under 23 U.S.C §§139, 326, or 327, under which FHWA delegates to a state transportation agency the authority to issue approvals of environmental documents and take other actions. Subsection (c)(2) specifies that wherever in Chapter 2 it specifies that FHWA may issue an approval or take an action, the environmental division may issue the approval or take the action if FHWA has delegated appropriate authority to the department. New subsection (e) authorizes the department to request that FHWA publish in the *Federal Register* a notice that a permit, license, or approval is final, and notice of limitations of claims for judicial review under 23 U.S.C. §139(l).

New §2.4, Project Coordination, restates the duties of the district and environmental division on exchanging information concerning a project with other governmental agencies (called "coordination"). This section, and the following new sections, also implement SAFETEA-LU. The law establishes new requirements for environmental processing that apply to a federal-aid project that is classified as an environmental impact statement (EIS) project. 23 U.S.C. §139. New §2.4(a) defines a "participating agency" as any agency, department, or other unit of federal, state, local, or Indian tribal government, that may have an interest in a project. A "cooperating agency" is a participating agency that is a federal agency that either has jurisdiction by law or has special expertise with respect to any environmental issue. 40 C.F.R. §1501.6. The new rules use the same terms to prevent confusion when interpreting federal rules and department rules.

New §2.5, Public Involvement, restates the requirements for public involvement concerning a project. There are also new provisions. Subsection (e) concerns public involvement for an EIS project or supplemental environmental impact statement (SEIS) project. Subsection (e)(1) concerns the applicability of the provisions in the subsection that implement Section 6002 of SAFETEA-LU (23 U.S.C. §139). For a federal-aid project, the SAFETEA-LU requirements apply if the original notice of intent (NOI) was published in the *Federal Register* after August 10, 2005. (The effective date of SAFETEA-LU was August 11, 2005.) For purposes of consistency, for a state project, the requirements apply if the original NOI was published in the *Texas Register* after August 10, 2005. Subsection (e)(9) concerns additional requirements for notice of availability of a final environmental impact statement (FEIS) for a Trans-Texas Corridor project. This implements House Bill 2702, 79th Legislature, Regular Session, 2005 (HB 2702), and new Transportation Code, §227.004(b).

New §2.6, Public Involvement-Meeting with Affected Property Owners, restates the requirements for this type of public involvement.

New §2.7, Public Involvement-Public Meeting, restates the requirements for this type of public involvement.

New §2.8, Public Involvement-Opportunity for Public Hearing, restates the requirements for this type of public involvement.

New §2.9, Public Involvement-Public Hearing, restates the requirements for this type of public involvement. Subsection (b) lists the type of projects for which a public hearing is mandatory. This includes a project that requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area, as covered in Parks and Wildlife Code, §§26.001 et seq, or requires the taking of private land designated and used as an historic site. The state public hearing requirement applies whether or not there is a finding the taking is de minimis under federal law. See, SAFETEA-LU and 23 U.S.C §128. Subsection (d)(2) concerns the publication of notice of a public hearing. The requirement has been changed because "newspaper" is now plural. If the dominant language spoken by the local population affected by a transportation project is other than English, then the district should publish notice both in a newspaper in English, and in another newspaper in the local language. If the dominant local language is English then publishing the notice in one newspaper is sufficient. Also, the requirements have been changed slightly for a project that requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area. The requirements now track exactly the requirements in Parks & Wildlife Code, §26.002, to ensure that the department complies with the statutory requirements.

New §2.10, Categorical Exclusion (CE), restates the environmental review requirements for a project classified as a categorical exclusion. Subsection (a)(2) states that the section does not apply to the purchase of an option to acquire real property. The section also does not apply to the exercise of an option or other early or advance acquisition of right-of-way. The subsection also adds a cross reference to new provisions in §2.17 concerning Special Right-of-Way Acquisition on this subject. The new provisions are discussed later in this preamble. Subsection (c)(2)(Y) adds a new example of a blanket CE: utility installations along or across a transportation corridor. The department's programmatic agreement with FHWA concerning the processing of CE projects identifies this type of work as a blanket CE.

New §2.11, Environmental Assessment (EA), restates the environmental review requirements for a project classified as requiring an environmental assessment.

New §2.12, Environmental Impact Statement (EIS), restates the environmental review requirements for a project classified as requiring an environmental impact statement. Subsection (e)(1) concerning the preparation of the draft environmental impact statement (DEIS) includes a new provision on developing the preferred alternative to a higher level of detail. This implements SAFETEA-LU. 23 U.S.C. §139(f)(4). Subsection (e)(2) adds new requirements for preparation of a DEIS for a Trans-Texas Corridor project. This implements HB 2702, and new Transportation Code, §227.004(a).

New §2.13, Reevaluation, restates the environmental review requirements for when a project must undergo a reevaluation. Subsection (e) concerning a notice of continuous activity is a new provision that reflects existing department practice. For a project that is not complete, the district must submit to the environmental division a report showing why a reevaluation is not needed.

New §2.14, Supplemental Environmental Assessment, authorizes the department to prepare a supplemental environmental assessment. The new section requires the preparation of a supplemental EA when there are changes to the project that were not evaluated in the EA, or when there is new information or circumstances that were not evaluated in the EA. The scope of the supplemental document may be limited to the changes, rather

than a scope that focuses on the entire project as required for a reevaluation. The new section is similar to a provision for a supplemental environmental impact statement (SEIS) that provides if the department is uncertain of the significance of new impacts, the department shall develop appropriate environmental studies, including an EA, to assess the impacts of the changes, new information, or new circumstances. See repealed §2.43(h)(4), and new §2.15(d). The department believes it is appropriate to use the same procedure for a project classified as an EA. The department believes this is an efficient use of department resources to focus on the known changes and prepare a thorough review of those changes. The scope of a supplemental EA would be limited to changes to the project that were not evaluated in the EA, or new information or circumstances.

New §2.15, Supplemental Environmental Impact Statement (SEIS), restates the requirements for an SEIS.

New §2.16, Mitigation, restates the requirements for mitigating the environmental impacts of a project. There are also new provisions. Portions of subsection (b) and subsection (c) implement HB 2702, concerning new Transportation Code, §201.617, and the repeal of Transportation Code, §201.6061. HB 2702 requires that before the department acquires by purchase or condemnation real property to mitigate an adverse environmental impact, the department shall, if authorized by the applicable regulatory authority, offer to purchase a conservation easement from the owner of the real property.

New §2.17, Special Right-of-Way Acquisition, restates the requirements concerning the acquisition of right-of-way under certain circumstances. There are also several new provisions. Subsection (c) implements Senate Bill 1273, 79th Legislature, Regular Session, 2005 (SB 1273), and new Natural Resources Code, §183.057. The law concerns the acquisition of private land encumbered by an agricultural conservation easement purchased in accordance with Natural Resources Code, Chapter 183. The department may review, and if appropriate, approve the acquisition. The department interprets the statutory requirement to hold a public hearing as being satisfied by a public hearing held under §2.9 of this subchapter (relating to Public Participation-Public Hearing). The department may at a hearing approve the findings required under the statute.

Subsection (e) concerns early and advance acquisitions. Subsection (e)(1) specifies the method for making a CE analysis for early and advance acquisitions is under the standards set forth in this subsection. The department shall identify environmental issues, and identify any environmental liabilities associated with the acquisition. The department believes this level of analysis is reasonable, which is less stringent than the analysis required under §2.10 concerning Categorical Exclusion (CE), because the subsection also provides an early or advance acquisition shall not influence the final environmental decision regarding the build, no-build decision, or a decision regarding the project alignment. However, certain early or advance acquisitions would have a significant impact even if they do not influence the final environmental decision on a project. Accordingly, the subsection also provides that the department shall not make an early or advance acquisition for protective buying that requires relocation, or for the taking of public land or an historic site. An early or advance acquisition that is a hardship acquisition (that is, at the request of the landowner), protective buying (other than requiring a relocation), or a donation should not itself have a significant impact. The last sentence in subsection (e)(1) clarifies that a categorical exclusion analysis (to support an early or advance acquisition) is not required for a transportation project for which there is an approved environmental document. Subsection (e) applies to acquisitions of right-of-way before the environmental document is issued for the project. Subsection (e) does not apply if the environmental document has been issued. Subsection (e)(2) concerns the department's acquisition of an option to purchase real property (as authorized under Transportation Code, §202.112) and the exercise of the option. The department may purchase an option if the department conducts a site assessment and determines that the property does not appear to contain significant contamination of hazardous materials, or other potential environmental concerns. A CE analysis under §2.10 is not required because the purchase of an option will not have significant impacts on the environment, and the purchase will not influence the final environmental decision on a project. The subsection also specifies that the exercise of an option is a type of early or advance acquisition, and the requirements of subsection (e)(1) apply to the exercise.

New §2.18, Maintenance Projects and Programs, restates the requirements concerning the environmental approval for maintenance projects and programs. A provision was added to clarify that the environmental division reviews, and if appropriate, approves a maintenance program.

New §2.19, Rail Transportation Project, restates the requirements concerning the environmental approval for a rail transportation project.

New §2.20, Public or Private Entity Receiving Financial Assistance from the Department for a Project, restates the environmental processing requirements for such projects. Subsections (c) and (d) list the information the entity must submit to the department. These requirements were changed slightly so that they match the parallel requirements in §2.3(d) (relating to Federal-Aid Project) to avoid confusion.

COMMENTS

No comments on the proposed repeals and new sections were received.

In new §2.5(e)(3)(E)(ii), §2.9(d)(1), and §2.11(a)(2) and (f)(1), nonsubstantive changes in language are made to correct terminology and enhance readability. The department revised the adopted §2.9(b)(8) concerning public involvement-public hearing. The department revised the new rule so that, similar to the repealed §2.43(c)(7), a public hearing is mandatory if 10 or more individuals submit a written hearing request. If between one and nine individuals submit a hearing request a hearing is mandatory unless the department is able to address the concerns of the individuals.

SUBCHAPTER A. COMPREHENSIVE POLICY ON THE ENVIRONMENT

43 TAC §§2.1 - 2.4

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project, Transportation Code, §203.022, which requires the department to adopt rules concerning public participation during the environmental processing of certain projects, and Transportation Code, §201.604, which re-

quires the department to adopt rules for the environmental review of transportation projects that are not subject to review under the National Environmental Policy Act.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.034, 201.606, 201.607, 201.610, 201.617, 203.021, §227.004, 227.027, and 227.028, Parks and Wildlife Code, §26.002, and Natural Resources Code, §183.057.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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SUBCHAPTER C. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT FOR TRANSPORTATION PROJECTS

43 TAC §§2.40 - 2.43, 2.45 - 2.47, 2.49, 2.50

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project, Transportation Code, §203.022, which requires the department to adopt rules concerning public participation during the environmental processing of certain projects, and Transportation Code, §201.604, which requires the department to adopt rules for the environmental review of transportation projects that are not subject to review under the National Environmental Policy Act.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.034, 201.606, 201.607, 201.610, 201.617, 203.021, 227.004, 227.027, and 227.028, Parks and Wildlife Code, §26.002, and Natural Resources Code, §183.057.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Transportation
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For further information, please call: (512) 463-8683

♦ ♦ ♦

SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT FOR TRANSPORTATION PROJECTS

43 TAC §§2.1 - 2.20

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project, Transportation Code, §203.022, which requires the department to adopt rules concerning public participation during the environmental processing of certain projects, and Transportation Code, §201.604, which requires the department to adopt rules for the environmental review of transportation projects that are not subject to review under the National Environmental Policy Act.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.034, 201.606, 201.607, 201.610, 201.617, 203.021, 227.004, 227.027, and 227.028, Parks and Wildlife Code, §26.002, and Natural Resources Code, §183.057.

§2.5. Public Involvement.

(a) Applicability.

(1) A reference in this subsection to public involvement means this section and §2.6 of this subchapter (relating to Public Involvement-Meeting with Affected Property Owners (MAPO)) through §2.9 of this subchapter (relating to Public Involvement-Public Hearing).

(2) The public involvement for a transportation project is based on the project's type, complexity, and level of public concern that is based on environmental issues.

(b) Responsible office.

(1) The district responsible for a project shall be responsible for conducting public involvement.

(2) Each district shall maintain a list of elected public officials, individuals, and groups interested in transportation projects. A district shall provide notification to these individuals and groups of a public meeting and of a public hearing.

(c) Public involvement for CE project.

(1) The district shall review §2.6 of this subchapter and hold a MAPO if appropriate.

(2) The district shall review §2.7 of this subchapter (relating to Public Involvement-Public Meeting) and hold a public meeting if appropriate.

(3) The district shall review §2.8 of this subchapter (relating to Public Involvement-Opportunity for Public Hearing) and §2.9 of this subchapter and provide an opportunity for public hearing and hold a public hearing if appropriate.

(4) If the district held a public hearing, the district shall publish a notice of availability in local newspapers having general circulation of the availability of the summary and analysis, and the comment and response report of the public hearing, and how to obtain copies of the summary and analysis and comment and response reports. The district shall give the notice of availability to the metropolitan planning organization, and provide the notice to the local media through a press release.

(d) Public involvement for EA project or Supplemental EA project.

(1) The district shall review §2.7 of this subchapter and hold a public meeting if appropriate.

(2) The district shall review §2.8 and §2.9 of this subchapter and provide an opportunity for a public hearing or hold a public hearing if appropriate.

(3) If the district held a public hearing, the district shall publish a notice of availability in local newspapers having general circulation of the availability of the summary and analysis, and the comment and response report of the public hearing, and how to obtain copies of the summary and analysis and comment and response reports. The district shall give the notice of availability to the metropolitan planning organization, and provide the notice to the local media through a press release.

(4) If a FONSI is issued concerning the transportation project the district shall give notice of availability of the FONSI to the metropolitan planning organization, and to the local media by press release.

(e) Public involvement for EIS project or supplemental EIS project.

(1) Applicability of certain requirements.

(A) Except as provided in subparagraph B of this paragraph, the requirements in this subsection apply to projects that are an EIS project or SEIS project.

(B) The requirements in this subsection that implement Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-059)(SAFETEA-LU)(23 United States Code §139) apply only to certain EIS projects and SEIS projects. The requirements apply to a federal-aid project if the original NOI was published in the *Federal Register* after August 10, 2005. The requirements apply to a state project if the original NOI was published in the *Texas Register* after August 10, 2005.

(2) Notice of Intent (NOI).

(A) Notice of intent means a notice that an environmental impact statement will be prepared and considered. An NOI is a required form of public involvement. The department shall publish an NOI prior to the preparation of an EIS, and when the department determines it is necessary to supplement a final EIS.

(B) The NOI shall:

(i) briefly describe the project;

(ii) identify known and potential significant impacts on the human environment to the extent known at this stage of project planning;

(iii) identify any preliminary alternatives under consideration by the department;

(iv) identify the federal approvals anticipated to be necessary for the project;

(v) identify whether, when, and where any scoping meetings will be held;

(vi) state that the scoping meeting is an opportunity for participating agencies, cooperating agencies, and the public to be involved in defining the need and purpose for the proposed project, and to assist in determining the range of alternatives for consideration in the DEIS;

(vii) give a proposed schedule for completion of the environmental review process, if available; and

(viii) give the name and address of the designated department employee who can answer questions about the project and the EIS.

(C) The district shall prepare a draft NOI. The environmental division shall review and, if appropriate, approve the notice. For a federal-aid project, FHWA shall review and, if appropriate, approve the notice.

(D) If the environmental division approves the NOI the environmental division shall submit it for publication in the *Texas Register.* If it is a federal-aid project, the department shall provide a copy of the approved NOI to FHWA for publication in the *Federal Register.* The district shall publish the NOI or a summary in local newspapers.

(E) After publication of the NOI the district shall begin the scoping process and prepare the coordination plan under paragraph (3) of this subsection.

(3) Coordination plan.

(A) A coordination plan is a plan for coordinating public and agency participation in and comment on the environmental review process. As early as practicable in the environmental review process the district responsible for a project shall prepare a plan. The district may develop a coordination plan on a project by project basis.

(B) Except as provided in subparagraph (D) of this paragraph, a coordination plan shall provide for:

(i) an initial scoping meeting that addresses:

(I) a draft need and purpose statement, together with backup materials and a request for comments on it;

(II) a draft coordination plan for the entire environmental review process, and a request for comments on it;

(III) the range of alternatives, and the known or potential significant impacts (to the extent known at this stage of project planning) to be addressed in the EIS;

(IV) a proposed method of alternatives analysis specifying the level of detail for each alternative proposed by the district, and a request for comments;

(V) information for issue identification and resolution, including information regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration; and

(VI) identification of the potential participating agencies and cooperating agencies;

(ii) a second scoping meeting that presents:

(I) the approved coordination plan;

(II) the range of alternatives based on the approved need and purpose; and

(III) the method and level of detail used for the alternatives analysis, after taking into consideration input given during the initial scoping meeting;

(iii) a deadline of no less than 45 days for comment on the DEIS from availability of the DEIS (For a federal-aid project, the materials are deemed available upon publication in the *Federal Register* of notice of the public availability of the document. The deadline for all other comment periods is no more than 30 days from availability of the materials on which comment is requested.); and

(iv) identification of the participating agencies and cooperating agencies.

(C) A coordination plan may include a schedule for completion of the environmental review process for the project. In establishing a schedule, the district shall consider:

(i) the responsibilities of participating agencies and cooperating agencies under applicable laws;

(ii) resources available to the cooperating agencies;

(iii) overall size and complexity of the project;

(iv) the overall schedule for and cost of the project; and

(v) the sensitivity of the natural and historic resources that could be affected by the project.

(D) Scoping meetings are not required for a supplemental EIS.

(E) The district shall obtain approval of a coordination plan in accordance with this subparagraph.

(i) The district shall submit the draft coordination plan to the environmental division for approval before the initial scoping meeting. For a federal-aid project, the FHWA shall review, and if appropriate, approve the draft coordination plan.

(ii) The district shall circulate the approved draft coordination plan to the identified agencies to invite them to become one or both participating agencies and cooperating agencies during the environmental review process, to comment on the draft coordination plan, and to comment on a proposed schedule for the completion of the environmental process if one is available. The district shall consider comments by the agencies concerning need and purpose, the range of alternatives, the method of alternatives analysis and level of detail, and the schedule for completing the environmental review process if available. The district shall circulate the approved draft coordination plan to the public under paragraph (6) of this subsection. The district shall consider comments by the public concerning purpose and need, and the range of alternatives. The district shall allow no less than 30 days for comment on the draft coordination plan and schedule. For an EIS the deadline shall be after the initial scoping meeting and before the second scoping meeting. After the comment period the district shall submit the coordination plan to the environmental division for approval. For a federal-aid project the environmental division shall submit the plan to FHWA for approval.

(F) The district shall give a copy of the approved coordination plan, plus any approved schedule for completion of the environmental review process, to the participating agencies and cooperating agencies and shall make it available to the public.

(G) A deadline for comment by agencies and the public established in a coordination plan may be changed in accordance with this subparagraph.

(i) A deadline may be extended for good cause. The good cause shall be documented in the administrative record for the project. For a federal-aid project, the environmental division shall submit the proposed extended deadline to FHWA for approval.

(ii) The district must obtain the concurrence of participating agencies and cooperating agencies to shorten a deadline, and their concurrence shall be documented in the administrative record for the project. For a federal-aid project, the environmental division shall submit the proposed shortening of the deadline to FHWA for approval.

(4) Public meeting. The district shall hold at least one public meeting under §2.7 of this subchapter.

(5) Notice of availability of DEIS. Notice of availability of the DEIS shall be made under this paragraph after the DEIS is approved under §2.12 of this subchapter, subsection (e) (relating to DEIS).

(A) The environmental division shall:

(i) publish a notice of availability in the *Texas Register* describing a circulation and comment period of no less than 45 days and identifying where comments are to be sent;

(ii) for a federal-aid project, provide a copy of the notice of availability to FHWA for publication in the *Federal Register;*

(iii) transmit the DEIS at no charge to state agencies through the TRACS system, and directly to participating federal agencies and cooperating federal agencies; and

(iv) coordinate directly with other governmental entities in accordance with memoranda of understanding under Subchapter B of this chapter, memoranda of agreement, or other formal and informal agreements with those entities.

(B) The district shall:

(i) publish a notice of availability in local newspapers describing a circulation and comment period of no less than 45 days and identifying where comments are to be sent; and

(ii) coordinate directly with local agencies, including the appropriate metropolitan planning organization.

(6) Circulation of draft coordination plan, DEIS, and FEIS. This paragraph applies to the circulation of the draft coordination plan when it is approved under this subsection, and to the circulation of the DEIS and FEIS when the respective documents are approved under §2.12 of this subchapter (relating to Environmental Impact Statement (EIS)). The district shall prepare an initial printing of the document in sufficient quantity to meet the request for copies that can be reasonably expected from agencies, organizations, and individuals. Copies shall be provided upon request. The district shall place copies of a draft coordination plan or DEIS in appropriate designated public locations, such as local government offices, libraries, or other public institutions. The district shall transmit the FEIS to a person, organization, or agency that made substantive comments on the DEIS or requested a copy. The environmental division shall give the document to the participating state and federal agencies, and to cooperating agencies. The department may charge a fee not to exceed the cost of reproduction. In the case of a lengthy document, the district or environmental division may provide alternative circulation processes under 40 Code of Federal Regulations §1502.19, including the circulation of a summary.

(7) Public hearing concerning DEIS. A public hearing concerning the DEIS shall be held under this paragraph after the DEIS

is approved under §2.12 of this subchapter, subsection (e) (relating to DEIS).

(A) The district shall hold a public hearing for a DEIS highway improvement project in accordance with §2.9 of this subchapter.

(B) The district shall make available the DEIS at a designated location for the general public 45 days in advance of the public hearing.

(8) Notice of availability of FEIS. Notice of availability shall be made under this paragraph after the FEIS is approved under §2.12 of this subchapter.

(A) For a federal-aid project, the environmental division shall provide a copy of the notice of availability of the FEIS to FHWA for publication in the *Federal Register.*

(B) The environmental division shall publish a notice of availability of the FEIS in the *Texas Register.* The district shall publish a duplicate notice in local newspapers. The notices shall:

(i) include information on obtaining copies; and

(ii) state that the public will have no less than 30 days following publication of the notice in the *Texas Register* to submit comments, and how the public may submit comments.

(C) The environmental division shall coordinate directly with other governmental entities in accordance with memoranda of understanding under Subchapter B of this chapter, memoranda of agreement, or other formal and informal agreements with those entities.

(9) Notice of availability of FEIS for project on Trans-Texas Corridor. In addition to the requirements in paragraph (7) of this subsection, after the FEIS for a project on the Trans-Texas corridor is approved under §2.12 of this subchapter, the district shall take the actions described in this paragraph.

(A) The district shall post the FEIS on the department's internet website, along with information detailing where a copy may be reviewed or obtained.

(B) The district shall notify the following persons that the FEIS is available on the department's website:

(i) each state senator and representative who represents any part of the area in which a segment of the project is located; and

(ii) the commissioners court of each county in which the project is located.

(10) Notice of ROD. The environmental division shall publish notice of the ROD in the *Texas Register.* The district shall publish a notice of availability of the ROD in local newspapers.

(f) Additional requirements for certain projects. This subsection applies to a project that involves the addition of one or more vehicular lanes to an existing highway, or to the construction of a highway at a new location, following project approval of a CE, or issuance of a FONSI or ROD. Pursuant to Transportation Code, §203.022(a), the district shall give notice of a transportation project to owners of adjacent property, and affected local governments and public officials. The district shall review the requirements in §2.8 and §2.9 of this subchapter and provide an opportunity for public hearing and hold a public hearing if appropriate.

(g) After completion of public involvement. Following completion of the public involvement process, the department shall publicize through press releases project specific planning and development decisions in order to keep the public informed of any new or continuing issues. Changes to the project may require additional public involvement.

(h) Additional requirements for project affected by significant changes.

(1) Pursuant to Transportation Code, §203.022(b), the district shall provide an additional opportunity for public involvement for a project that has received project approval. This subsection applies if:

(A) the project involves the addition of one or more vehicular lanes to an existing highway, or to the construction of a highway at a new location; and

(B) there are conditions relating to land use, traffic volumes, and traffic patterns that have changed significantly since the project was originally subject to public review and comment.

(2) If this subsection applies to a project the district shall conduct public involvement under this paragraph.

(A) The district shall provide an opportunity for public hearing under §2.8 of this subchapter.

(B) The district shall hold a public hearing under §2.9 of this subchapter if the project requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area.

(3) The subsection does not apply to a public transportation project.

(i) Notice of impending construction. Pursuant to Transportation Code, §203.022(c), the district shall send notice of impending construction of a project that involves either the addition of at least one travel lane or construction of a project on new location to landowners abutting the roadway as identified by tax rolls, and to affected local governments and public officials.

§2.9. Public Involvement-Public Hearing.

(a) Purpose. A public hearing is held to present project alternatives and to encourage and solicit public comment. The hearing is held after location and design studies are developed and the environmental document is considered technically complete and approved as a full disclosure document suitable for public review by the environmental division. For a federal-aid project, the public hearing shall be held after FHWA determines the environmental document is considered technically complete and approved as a full disclosure.

(b) Public hearing required. A district shall hold a public hearing if one or more of the paragraphs in this subsection apply to the project.

(1) A project with substantial public interest or controversy.

(2) An EIS project.

(3) A high-profile project.

(4) A request for hearing is received under §2.8 of this subchapter (relating to Public Involvement-Opportunity for Public Hearing);

(5) A project requires the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site or scientific area, as covered in the Parks and Wildlife Code, §§26.001 et seq, or requires the taking of private land designated and used as an historic site. The state public hearing requirement applies whether or not there is a finding the taking is de minimis under federal law.

(6) A project requiring a public hearing under Transportation Code, §203.021.

(7) An aviation project requiring a residential or commercial relocation.

(8) In accordance with Transportation Code, §201.604, between one and nine individuals submit a written request for a hearing and the district is unable to address the concerns of the individuals, or if ten or more individuals submit a written request for a hearing. Notwithstanding the preceding sentence, a public hearing is not required if a public hearing has already been held concerning the project, or if the hearing requests are received after the environmental document for the project is approved.

(9) A project requires the taking of private land encumbered by an agricultural conservation easement purchased under Natural Resources Code, Chapter 183.

(c) Documents available for public inspection. The district shall make available to the public at designated locations for no less than 30 days before a public hearing the maps, drawings, environmental studies and documents concerning the project. For an EIS project the district shall make available the DEIS for 45 days.

(d) Notice of public hearing.

(1) A notice shall contain the information listed in this paragraph.

(A) Time, date, and location of the hearing.

(B) A description of the project termini, need and purpose, improvements, and right of way needs.

(C) A reference to maps, drawings, environmental studies and documents, and any other information about the project that is available for public inspection at the designated locations.

(D) A reference to the potential for relocation of residences and businesses and the availability of relocation assistance for displaces.

(E) A statement that written comments may be presented for a period of 10 days after the hearing.

(F) The address where written comments may be submitted.

(G) Whether the project encroaches on a floodplain, wetland, or a sole-source aquifer recharge zone.

(H) A statement, if applicable, that the project will require the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area, and whether the taking is de minimis under federal law.

(I) A statement, if applicable, that the project will require the taking of land protected by an agricultural conservation easement.

(J) A statement that provision will be made for persons with special communication or physical needs related to the public hearing if requested.

(2) Publication of notice.

(A) Except as provided in subparagraph (B) of this paragraph, the district shall publish a notice twice in local newspapers having general circulation. The first notice shall be published at least 30 days before the hearing. The second notice shall be published no more than 10 days nor less than seven days before the hearing.

(B) For projects requiring the taking of public land designated and used as a park, recreation area, wildlife refuge, historic site, or scientific area under Parks and Wildlife Code, §26.002, the district shall publish notice under this subparagraph.

(i) The notice must be given in writing to the person, organization, department, or agency that has supervision of the land proposed to be used or taken.

(ii) The notice must state clearly the proposed program or project and the date and place for the public hearing. The notice must be given at least 30 days before the date for the public hearing.

(iii) Notice must also be given to the public by publishing a notice similar to that specified in this section once a week for four consecutive weeks. The last days of publication must not be less than one week or more than two weeks before the date of the hearing. The notice must be published in a newspaper of general circulation, which paper must be published at least six days a week in the county where the land proposed to be used or taken is situated.

(iv) If there is no newspaper that qualifies under clause (iii) of this subparagraph, the notice must be published in a qualifying newspaper that is published in any county adjoining the county where the land is situated. If there is no qualifying newspaper published in any adjoining county, then the notice must be published in a qualifying newspaper published in the nearest county to the county where the land is situated. If there is no qualifying daily newspaper published therein, the notice must be published in any newspaper of general circulation published in the political subdivision affected. If no newspaper is published in the political subdivision, the notice must be published in a newspaper published in the political subdivision nearest the political subdivision affected.

(3) If the population that will be affected by the project is predominantly non-English speaking, the district shall also publish notice in the dominant language in accordance with Presidential Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.

(4) The district shall mail notice to landowners abutting the proposed project as identified by tax rolls, affected local governments, and public officials.

(e) Public hearing and comment. The district shall make all testimony given at a public hearing a part of the public hearing record. A person or other entity shall submit written comment to the district no later than 10 days after the close of the public hearing.

(f) Documentation of public hearing. If the district held a public hearing, the district shall submit to the environmental division for review and approval:

(1) two copies each of the verbatim transcript, the public hearing summary and analysis, and the comment and response report;

(2) the original certification of the public involvement process signed by the district engineer or his or her designee, containing:

(A) general information on the public hearing;

(B) a statement regarding consideration of the economic, social, and environmental impacts of the project;

(C) a statement regarding consideration of the statutory provisions of the Civil Rights Act of 1964 and the Civil Rights Restoration Act of 1987; and

(D) a statement regarding the project's consistency with planning goals and objectives.

§2.11. Environmental Assessment (EA).

(a) Applicability.

(1) This section applies to a transportation project when the extent of environmental impacts is not readily discerned.

(2) An EA is a public disclosure document that provides sufficient evidence and analysis for determining whether to prepare an EIS or issue a FONSI, and that describes the need for the project, any alternatives considered, and the extent of environmental impact including direct, indirect, and cumulative impacts. The department shall conduct environmental studies and prepare an EA to determine the nature and extent of environmental impacts, and to provide full disclosure of project impacts to the public.

(3) For an aviation project involving any residential or commercial relocations, environmental studies shall be conducted and an EA shall be prepared. For an aviation project that requires an EA, the department shall utilize the format and content requirements of Federal Aviation Administration (FAA) procedures established to comply with 42 United States Code §§4321 et seq.

(b) Purpose. The EA shall be prepared as a decision-making document. If the environmental studies show that the impacts are not significant, then the EA shall conclude with a FONSI. If the studies show that the impacts are significant, then the EA shall conclude that an EIS is required.

(c) Coordination and consultation.

(1) For a project that requires an EA, the department shall, at the earliest appropriate time, begin coordination and consultation with state and federal resource agencies, local political subdivisions, and the public to achieve the following:

(A) define the scope of the project;

(B) identify and evaluate any alternatives meeting the project's established need and purpose, including evaluation of the no-build alternative;

(C) determine potential social, economic, and environmental impact;

(D) identify mitigation measures and alternatives that might avoid, minimize, or compensate for adverse environmental impacts; and

(E) identify other environmental reviews, permits, and other approvals, as well as consultation requirements that should be done as part of the decision-making studies.

(2) The department shall include in the EA the results of review and consultation with regulatory agencies, and a summary of the agency contacts and comments received.

(d) Public Involvement. The district and environmental division shall comply with the public involvement requirements in §2.5 of this subchapter (relating to Public Involvement).

(e) Change in determination of impact. If the environmental division determines at any point during the environmental studies that the project may have a significant impact on the environment, the environmental division shall direct the district to prepare an EIS.

(f) FONSI.

(1) Finding of no significant impact means a document issued by the environmental division (or by the FHWA for a federal-aid highway project) that briefly presents the reasons why the transportation project, not otherwise a categorical exclusion, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment, or a summary of it, and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment, but may incorporate it by reference.

(2) The environmental division will review the EA, any proposed mitigation measures, agency consultation and coordination, and if a public hearing was held, the summary and analysis, and the comment and response report. If appropriate, the environmental division shall explain the decision in a written FONSI, including how the EA and other environmental documents, and agency consultation and coordination, affected the decision.

(g) Notification of FONSI. The district and environmental division shall give notice of availability of a FONSI in accordance with §2.5 of this subchapter.

(h) Additional permits or approvals. After issuance of a FONSI, but before the project is approved for construction letting, the district shall ensure the project has obtained all necessary permits or approvals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

CHAPTER 9. CONTRACT MANAGEMENT

SUBCHAPTER D. BUSINESS OPPORTUNITY PROGRAMS

43 TAC §9.53

The Texas Department of Transportation (department) adopts amendments to §9.53, concerning the disadvantaged business enterprise (DBE) program. The amendments to §9.53 are adopted without changes to the proposed text as published in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8488) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

After its compliance review of the department's Disadvantaged Business Enterprise Program (DBE), the Federal Highway Administration (FHWA) recommended changes to §9.53 to comply with 49 CFR Part 26, the federal rules for DBEs. The department is adopting amendments to §9.53 in response to these recommendations.

Subsection (a) is amended to comply with the provisions of 49 CFR §26.25 requiring an independent DBE liaison to administer the DBE program.

Subsection (c)(1) documents a prime contractor's commitment to meet DBE goals as required by 49 CFR §26.53.

Subsection (d)(1) changes the DBE certification from three years to an open period conditioned upon no change in status and a DBE's submission of an annual affidavit to this effect as required by 49 CFR Part 26, Subpart D.

Subsection (d)(2) clarifies that a DBE is not required to reapply for certification, but must submit an annual affidavit as required by 49 CFR Part 26, Subpart D.

Subsection (d)(4) adds subparagraph (C) to clarify that determinations of ownership and control of a DBE will be made to comply with 49 CFR §26.69 and §26.71.

Subsection (d)(5)(B) adds clause (iii) to clarify how participation is counted when a DBE performs work in a joint venture to comply with 49 CFR §26.55. Subsection (d)(5) deletes subparagraph (C) because a disadvantaged truck owner operator is not a separate DBE category requiring a separate DBE application under 49 CFR Part 26.

Subsection (d)(7) clarifies that DBE certification must be maintained by meeting certification standards and submission of an annual affidavit to comply with 49 CFR §26.83(j).

Subsection (d)(8)(A) is amended to notify DBE applicants that they cannot reapply for DBE certification until after twelve months if they withdraw their application.

Subsection (e)(5)(A) adds clause (iii) to clarify the activities that constitute a commercially useful function to comply with 49 CFR §26.55. Subsection (e)(5)(C)(i) clarifies the sanctions and procedure the department may use upon determining a DBE firm is not performing a commercially useful function to comply with 49 CFR §26.55. Subsection (e)(5)(D) is amended to correctly notify DBEs that the department's determinations in regard to whether a commercially useful function has been performed are not appealable to the USDOT to comply with 29 CFR §26.55(c)(5).

Subsection (e)(6)(C) is amended to clarify what activities and costs of the DBE may not be counted toward the DBE goal to comply with 49 CFR §26.55(a). Subsection (e)(6) is also amended by adding subparagraph (D) to clarify when the DBE's subcontractors work may be counted toward the DBE goal to comply with 49 CFR §26.55(a).

Subsection (e) has also been amended by adding subparagraph (8), concerning prompt payment to DBEs, and subparagraph (9), concerning how prime contractors must handle retainage, to comply with 49 CFR §26.29.

Other revisions to §9.53 correct grammar and punctuation and do not substantively affect the rules.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, §2251.022 and Government Code, Chapter 2253.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 18. MOTOR CARRIERS

The Texas Department of Transportation (department) adopts amendments to §§18.2, 18.13, 18.14, 18.16, and 18.32 concerning motor carrier definitions, registration, records, and inspections. The amendments to §§18.2, 18.13, 18.14, 18.16, and 18.32 are adopted without changes to the proposed text as published in the August 11, 2006 issue of the *Texas Register* (31 TexReg 6306) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted amendments are necessary to implement the provisions of House Bill 2702 of the 79th Legislature, Regular Session, 2005, and correct statutory citations.

House Bill 2702, Article 6, amended Transportation Code, §643.051, Registration Requirements, to require all household goods movers to register as motor carriers regardless of the weight of the vehicles they operate. The bill also deleted the alternative registration requirements for household goods carriers under Transportation Code, §643.153, Motor Carriers Transporting Household Goods. All household goods carriers must now register under the general motor carrier registration regardless of the size of vehicles they operate. The statutory changes eliminated the need for "Type A" and "Type B" household goods carrier classifications.

These amendments were initially proposed November 17, 2005, along with other rules regarding motor carrier registration issues. These amendments were removed from the rules as adopted during the April 27, 2006, Texas Transportation Commission (commission) meeting to allow the department time to further study the issue of minimum vehicle liability insurance requirements for household goods carriers who operate vehicles weighing 26,000 pounds or less. However, due to a clerical error, the language filed with the Texas Register on April 28, 2006, for §18.16(a) Figure 1 was not amended to reflect the language adopted by the commission. The language in Figure 1, regarding the minimum liability insurance level for household goods carriers under 26,000 pounds was not approved by the commission and is not being enforced by the department. The language now adopted for Figure 1 is the same language that is currently published in 43 TAC §18.16(a).

To study the minimum liability insurance issues, the department has contacted other states, gathered insurance information, reviewed traffic accident studies, contacted the Texas Department of Public Safety and the Department of Insurance regarding vehicle loss records, contacted the Federal Motor Carrier Safety Administration concerning crash data, collected data from the National Institute for Occupational Safety and Health and Insurance Institute for Highway Safety, and conducted a public hear-

ing. The information gathered from these resources was used to draft these adopted amendments.

Throughout the rules, all references to "Type A" and "Type B" household goods carriers are deleted.

The definition for "Type B" household goods carrier has been deleted from §18.2 as it is no longer necessary under Transportation Code, Chapter 643.

Amended language in §§18.2, 18.13, and 18.16 changes a statutory citation to conform to current law.

Amended language in §18.13(i) deletes the reference to the alternative registration process for Type B carriers. These alternatives are no longer authorized by the statute due to the changes in Transportation Code, §643.051 and §643.153.

Section 18.16(a), relating to automobile liability insurance requirements, is amended to establish a minimum liability insurance requirement for vehicles weighing 26,000 pounds or less that are operated by household goods carriers as required by the statutory changes. Transportation Code, §643.101 requires that a motor carrier required to register under Subchapter B shall maintain liability insurance in an amount set by the department for each vehicle the carrier operates requiring registration. Pursuant to Transportation Code, §643.101(b), the department is to consider the class and size of the vehicle and the persons or cargo transported in setting the insurance requirement. The rules set the minimum level of liability insurance for household goods carriers with gross weight of 26,000 pounds or less at $300,000 combined single limit (CSL). This figure was selected based on the research conducted by the Motor Carrier Division, which is summarized below.

In 1995 the department required motor carriers to maintain a minimum liability insurance of $500,000 CSL for commercial vehicles over 26,000 pounds operated in Texas. Household goods carriers operating vehicles 26,000 pounds or less were not required to register as motor carriers under the same provisions and, therefore, the department was not required to establish a minimum insurance requirement. These types of household goods carriers were required to maintain the minimum liability insurance levels required of all vehicles under Transportation Code, §601.072. Transportation Code, §601.007 exempts vehicles that are required to register under Transportation Code, §643.051 from the liability requirements of Transportation Code, Chapter 601.

Pursuant to Transportation Code, Chapter 601, the state mandated minimum insurance coverage for vehicles that are not required to register under the motor carrier provisions is $20,000 for bodily injury or death to one person; $40,000 for bodily injury or death to two or more persons; and $15,000 for property damage. This minimum level of insurance is inadequate for a regulated commercial activity.

A look at 16 states revealed that only Florida has lower requirements than the current liability insurance limit for household goods carriers weighing 26,000 pounds or less. Several states have set their minimum limits by using the existing federal requirements. The federal regulations found at 49 CFR §387.303 set the minimum vehicle liability insurance amounts for motor carriers operating in interstate commerce by weight of the vehicle. The federal regulations require vehicles weighing under 10,000 pounds to have a minimum of $300,000 CSL. Vehicles weighing over 10,000 pounds have a minimum federal limit of $750,000 CSL. The department's adopted rule requiring household goods carriers operating vehicles weighing 26,000 pounds or less, intrastate only, to carry a $300,000 CSL liability insurance policy complies with the state statute, which mandates that the minimum liability levels not exceed the federal requirements.

Large amounts of crash data are available, but the department was unable to find any accident rate studies specific to household goods carriers; therefore, very limited financial loss information is available. National statistics between 1975 - 2004 support that vehicles weighing 26,000 pounds or less incur as high an incident rate as do the larger trucks. The Insurance Institute for Highway Safety shows that, while the death rate for occupants in passenger cars has declined 12 percent in the last 30 years, the death rate for occupants in light trucks has increased 57 percent. This indicates that light trucks are involved in serious accidents that result in significant loss to the injured party. The existing minimum liability insurance requirements of Transportation Code, §601.072, are not sufficient to cover the costs of the at-fault party involved in a serious accident.

As stated, the language setting the minimum liability insurance at $300,000 was incorrectly included in the adoption filed April 28, 2006. This amendment adopts the same language and provides the justification for how the minimum liability insurance level was selected.

Amendments to §18.32(c) delete information regarding where and how Type B household goods carriers must carry registration certificates.

COMMENTS

The department received 50 comments, including comments from the Southwest Movers' Association, regarding the proposed rule during the comment period and three people testified during the public hearing. A summary of the comments and the department's responses follow.

Comment:

Thirty-five commenters indicated support for the elimination of the Class B mover category but requested application of the former Class B alternate registration and reporting requirements for all small business household goods movers as required by Government Code, Chapter 2006.

Response:

The department agrees with the elimination of the Class B mover category as required by changes to Transportation Code, §643.051. However, the department disagrees with application of the former Class B alternate registration and reporting requirements for all small business household goods movers. Government Code, Chapter 2006, requires an agency to reduce the adverse economic effect to small or micro-businesses only if doing so is legal and feasible considering the statute under which the rule is being adopted. The department does not believe an alternative is feasible due to the purpose of the statute under which these rules were proposed. To continue to allow an alternative reporting process for household goods carriers who operate vehicles under 26,000 pounds would be returning to the process in place prior to the statutory change.

Comment:

Ten commenters stated that they support the lower liability insurance limit for intrastate household goods carriers. They stated that the same size vehicles are required to carry $750,000 liability insurance to meet federal requirements for interstate movers.

Response:

The department agrees with these comments that the intrastate insurance requirement established by these adopted rules is lower than the federal minimum for similar size vehicles. Transportation Code, §643.101(b) allows the department to set the amount of liability insurance required at any amount that does not exceed the federal requirement. The adopted rules meet the statutory requirements.

Comment:

One commenter expressed that anyone in the moving industry has obligations to their customers and the motoring public and that those responsibilities should not be determined or limited by the size of the carrier. The commenter also supported the establishment of a minimum level of insurance for the industry and a consistent method of reporting insurance compliance.

Response:

The department agrees with the establishment of a consistent method of reporting insurance and registration requirements and the rules as adopted achieve this. The department also agrees that insurance requirements should not be determined by the size of the business and believes to do so would be in conflict with the purpose of the change to Transportation Code, §643.051. The rule does, however, establish insurance amounts based on the size of the vehicles operated.

Comment:

One commenter supports the proposed amendments and stated that the $300,000 minimum level of liability insurance on fleets less that 26,000 pounds will be a great improvement to both moving consumers as well as the general public.

Response:

The department agrees with the comment.

Comment:

One commenter stated that any implementation for requirements to meet new workers' compensation insurance are not only illegal but that they will most likely call for extreme manpower additions, will be unenforceable on any industry-wide basis, and will put undue financial burden on the independent business operators of moving companies.

Response:

The department does not agree with this comment. Changes to the workers' compensation coverage requirements are not addressed in these proposed rules.

Comment:

One commenter stated that the insurance filing burdens on the agency and the carrier are unnecessary and without statutory authority.

Response:

The department does not agree with this comment. Transportation Code, §643.103 clearly states that a motor carrier required to register under Subchapter B must file evidence of insurance with the department. The statute further authorizes the department to set the amount of liability insurance by rule.

Comment:

One commenter stated that the rules should be amended to remove the language added to the definition of "commercial motor vehicle" in §18.2(6)(A)(vi).

Response:

The definition of commercial motor vehicle is used for references to the term in 43 TAC Chapter 18 only. The definition does not affect other uses of the term in other rules or statutes.

Comment:

One commenter stated that his company and many others do not own vehicles, they contract and should not be required to carry insurance on non-owned vehicles.

Response:

The department does not agree with this comment. The statute requires that any vehicle operated by a motor carrier must be registered and insured.

Comment:

One commenter stated that the Texas Department of Transportation Household Goods Carrier Advisory Committee Vehicle Liability Insurance Study provided that there is no statutory authority authorizing the department to require any carrier to carry or file insurance. Instead Texas Civil Statutes, Article 6675c and the Transportation Code specifically outline when and to what extent insurance levels may be set by the department.

Response:

The department does not agree with this comment. Texas Civil Statutes, Article 6675(c) has been repealed and codified into Transportation Code, Chapter 643. House Bill 2702 amended §643.051 and the former "Type B" carriers are now required to register under Transportation Code, Chapter 643, Subchapter B and file insurance as required by Transportation Code, Chapter 643, Subchapter C. Transportation Code, §643.101 instructs the department to set the amount of liability insurance for motor carriers required to register under Transportation Code, Subchapter B.

Comment:

One commenter stated that the Class B mover is an effective existing alternative registration and reporting process that would mitigate some of the adverse economic effects of the new rules when applied to small businesses as required by Occupations Code, Chapter 2006.

Response:

The department does not agree with the comment. The "Class B" motor carrier registration is no longer authorized by the statute. The provisions in Transportation Code, §643.153 that set out the "Class B" reporting requirements were repealed under House Bill 2702 of the 79th Legislature, Regular Session, 2005. All motor carriers are required to report under the same statutory provisions. The department can not eliminate this requirement by rule. The statute provides the department the authority to set the insurance requirements by rule and that is what is addressed in these adopted rules. The department reviewed and considered small and micro-businesses in setting the liability insurance requirement. The department is mitigating the effect of the insurance requirement by proposing a lower limit of $300,000 instead of the higher federal requirement of $750,000 or the department's current requirement of $500,000 for larger vehicles.

Comment:

One commenter stated that there is nothing in House Bill 2702 that repeals Government Code, Chapter 2006 or conflicts with the application for the former Class B alternative registration and reporting process to small businesses.

Response:

The department disagrees in part with this comment. The commenter is correct that House Bill 2702 did not repeal Government Code, Chapter 2006. However, the bill did remove the alternative registration requirements from Transportation Code, §643.153. The department met all the requirements of Government Code, Chapter 2006 when posting this rule for consideration.

Comment:

One commenter stated that the current proposed rules are incorrectly published. The change in the definition of commercial motor vehicle does not correctly reflect the new language that has been added to the definition.

Response:

The department does not agree with this comment. The change to the definitions of commercial motor vehicle is not a part of these adopted rules. Proposed §18.2(6)(A)(vi) was published in the *Texas Register* on December 2, 2005 (30 TexReg 8021). The current definition was adopted by the commission on April 27, 2006. The language was published in the *Texas Register* (31 TexReg 3908) as adopted by the commission on May 12, 2006.

Comment:

One commenter requested that Article 6 of House Bill 2702 should be referred back to the legislature for clarification rather than force the agency into potential conflicts with other Texas laws, its own prior findings, and possibly assuming statutory authority which does not exist.

Response:

The department does not agree with the comment. The department does not have the authority to disregard or postpone implementing changes to the statute. The department is required to enforce the statute as written.

Comment:

One commenter requested that the department clarify and substantiate the statement that there has been a 57% increase in incidents of death in accidents involving pickups and light trucks in Texas.

Response:

Manufacturers use the same chassis for SUVs and pickups causing them to be rated in the same weight class. Proportionately, SUVs and pickups are more likely to be involved in accidents with a higher rate of death. The department stated that it was unable to gather accident information specific to household goods carriers and that the department provided statistics for pickups and light trucks based on claims from household goods carriers that they often operate those types of vehicles.

Comment:

One commenter stated that cost is important and that they would have to significantly raise prices to cover the new insurance requirements.

Response: The department agrees in part with the comment. The department has clearly indicated that there will be higher costs for businesses. The figures by department are estimates received from insurance agents. Due to the many factors that affect insurance premiums, it is difficult to determine exact cost. Some factors that can and may influence insurance premiums are location, type of vehicle, loss history, financial strength, longevity of the business, vehicle safety procedures, and driver records.

Comment:

One commenter stated that there needs to be a separate class for pickups.

Response:

The department does not agree with the comment. The rule that is proposed is setting up a separate level of insurance for a particular class of vehicles under 26,000 pounds which will include pickup trucks. The proposed $300,000 is a lower alternative than the current level of $500,000 required of vehicles over 26,000 pounds.

Comment:

One commenter questioned the use of a second dollar policy that is similar to an umbrella policy.

Response:

The department agrees with the comment. The adopted rules require filing proof of first dollar insurance coverage. However, nothing in department rules prevent a primary insurance company from mitigating their exposure through other subrogation agreements with insurance companies to lessen the ultimate expense to the motor carrier.

Comment:

One commenter representing the Southwest Movers' Association agrees with the department that the $300,000 minimum insurance limit is appropriate for the companies operating in smaller equipment when moving household goods in Texas.

Response:

The department agrees with the comment.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §18.2

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson
General Counsel
Texas Department of Transportation
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SUBCHAPTER B. MOTOR CARRIER REGISTRATION

43 TAC §§18.13, 18.14, 18.16

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. RECORDS AND INSPECTIONS

43 TAC §18.32

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §643.003, which authorizes the department to adopt rules to administer Transportation Code, Chapter 643 regarding motor carrier registration.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 643.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER G. INFORMATION LOGO SIGN AND TOURIST-ORIENTED DIRECTIONAL SIGN PROGRAM

43 TAC §25.401, §25.406

The Texas Department of Transportation (department) adopts amendments to §25.401, definitions, and §25.406, major shopping area eligibility. The amendments to §25.401 and §25.406 are adopted without changes to the proposed text as published in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8493) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted rules are necessary to correct the definition of highways eligible to be included in the information logo sign program. The definition currently included in the rule does not correctly reflect the statutory requirements. Transportation Code, §391.001 defines eligible highways to include only highways outside of an urbanized area with a population of 50,000 or more that qualified for a 65 mile per hour speed limit the day before 43 USC §154 was repealed. The federal statute was repealed on December 7, 1995. The current definition did not exclude controlled access highways that did not qualify for the 65 mile per hour speed limit prior to the repeal of 43 USC §154 as required by Transportation Code, §391.001.

The adopted language also corrects the types of shopping malls that qualify for a major shopping area guide sign. Transportation Code, §391.001 contains a more restrictive definition of major shopping area than the current definition in §25.401. Section 25.401 is amended to correct the definition of eligible highways to reflect the statutory definition.

Section 25.406 is amended to correct the types of major shopping areas that qualify for a major shopping area guide sign.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §391.032, which authorizes the department to establish rules to regulate the effective display of outdoor advertising.

CROSS REFERENCE TO STATUTE

Transportation Code, §391.001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606695
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 4, 2007
Proposal publication date: October 13, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

The Texas Department of Transportation (department) adopts amendments to §28.14, Manufactured Housing, and Industrialized Housing and Building Permits, §28.41, General Requirements, §28.62, Single Trip Mileage Permits, §28.63, Quarterly Hubometer Permits, §28.101, Responsibilities, and §28.102, Permit Issuance Requirements and Procedures. The amendments to §28.14, §28.41, §28.62, §28.63, §28.101, and §28.102 are adopted without changes to the proposed text as published in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8495) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The adopted amendments are necessary to: clarify permit issuance under manufactured and industrialized housing law in Transportation Code, §623.091 and Occupations Code, §1202.002 and §1202.003; correct statutory citations; and to update, streamline, and improve the effectiveness of the permitting process in Chambers County.

Amended language in §28.14(b)(2) clarifies that only industrialized housing and buildings that meet the definitions in Occupations Code, §1202.002 and §1202.003, qualify for a manufactured housing permit.

Amended language in §28.41, §28.62, and §28.63 changes a statutory citation to conform to current law.

Amended language in §28.101(f)(3), (g)(1), and (h)(1) clarifies that fee collections will be deposited into the state highway fund at pre-determined intervals as set in the maintenance contract between the department and Chambers County. Section 28.101(h)(2) is deleted as it is no longer necessary due to the changes in section 28.101(h)(1).

Sections 28.102(a)(5), (9), and (12) are deleted to streamline the permit application process. The tire and axle information, name of the driver, and the name of the employee who issued the permit are not necessary for the issuance of a permit. Removing the requirement for tire and axle information will allow the permit holder to operate any legally registered truck and trailer that meets all other requirements of this subchapter. Permits are generally processed automatically through the Chambers County permitting system, therefore an employee is not always involved in the process to be named on the application. In addition, a driver-specific permit has created administrative problems due to the nature of the motor carriers operating within the Cedar Crossing Business Park. Removing this requirement allows the motor carrier to replace drivers without applying for additional or amended permits.

New §28.102(i) is added to clarify that loads moving exclusively within the Cedar Crossing Business Park must obtain a Chambers County permit. The department has determined that requiring the Chambers County permit when the vehicle is eligible will provide a more efficient process.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER B. GENERAL PERMITS

43 TAC §28.14

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.091 and Occupations Code, §1202.002 and §1202.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606696
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 4, 2007
Proposal publication date: October 13, 2006
For further information, please call: (512) 463-8683

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SUBCHAPTER D. PERMITS FOR OVERSIZE AND OVERWEIGHT OIL WELL RELATED VEHICLES

43 TAC §28.41

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.091 and Occupations Code, §1202.002 and §1202.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606697
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 4, 2007
Proposal publication date: October 13, 2006
For further information, please call: (512) 463-8683

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SUBCHAPTER E. PERMITS FOR OVERSIZE AND OVERWEIGHT UNLADEN LIFT EQUIPMENT MOTOR VEHICLES

43 TAC §28.62, §28.63

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.091 and Occupations Code, §1202.002 and §1202.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606698
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 4, 2007
Proposal publication date: October 13, 2006
For further information, please call: (512) 463-8683

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SUBCHAPTER H. CHAMBERS COUNTY PERMITS

43 TAC §28.101, §28.102

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 623, which authorizes the department to administer the provisions of the laws governing the issuance of permits for the movement of oversize and overweight vehicles and loads.

CROSS REFERENCE TO STATUTE

Transportation Code, §623.091 and Occupations Code, §1202.002 and §1202.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 15, 2006.

TRD-200606699
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: January 4, 2007
Proposal publication date: October 13, 2006
For further information, please call: (512) 463-8683

♦ ♦ ♦

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

Effective Date: March 1, 2007

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF REVISED WORKERS' COMPENSATION CLASSIFICATION RELATIVITIES; AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATION, AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE UPDATING EXPECTED LOSS RATES AND DISCOUNT RATIOS

The Commissioner of Insurance (Commissioner) adopts the amendments proposed by the Texas Department of Insurance (Department) staff in a petition (Ref. No. W-1006-21-I) filed on October 20, 2006. Notice of the proposal was published in the November 3, 2006, issue of the *Texas Register* (31 TexReg 9041). No comments were received on the proposed changes and no hearing was requested. The amendments are adopted without changes.

The adopted amendments include revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. 05-0906, dated October 18, 2005, and a revised table amending the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating.

The Commissioner has jurisdiction over this matter pursuant to Articles 5.60 and 5.96 of the Insurance Code. Article 5.60(a) authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60(d) provides that the Commissioner revise the classification system at least once every five years.

The Commissioner has determined that it is necessary to revise the classification relativities and the Basic Manual as proposed by staff in the petition so that the classification relativities and the Basic Manual are based on the most recent experience data available.

The revised classification relativities schedule and Basic Manual table have been on file with the Office of the Chief Clerk of the Department since October 23, 2006, and are incorporated by reference into this Commissioner's Order.

This adoption is made pursuant to Article 5.96 of the Insurance Code, which exempts actions taken under it from the requirements of the Administrative Procedures Act (Government Code, Title 10, Chapter 2001).

Pursuant to Article 5.96(h) of the Insurance Code, the Department will notify all affected insurers prior to the effective date of this action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments to the classification relativities and the Basic Manual proposed by the staff petition (Ref. No. W-1006-21-I) are adopted.

IT IS FURTHER ORDERED that the revised classification relativities are available for immediate use by insurers and that their use is mandatory for all policies with an effective date on or after March 1, 2007, unless the insurer makes an independent filing to justify insurer-specific classification relatives.

IT IS FURTHER ORDERED that the amendments to the Basic Manual apply to all policies with an effective date on or after March 1, 2007.

TRD-200606819
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: December 19, 2006

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Commission of Licensing and Regulation ("Commission") filed a notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code ("TAC"), Chapter 77, Service Contract Providers in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8112).

In accordance with the requirements of Texas Government Code, §2001.039, the Texas Department of Licensing and Regulation (Department) reviewed the administrative rules of 16 TAC Chapter 77, Service Contract Providers to determine if the rules were obsolete, reflect current legal and policy considerations, and reflect current procedures of the Department.

The Department's review determined that the reasons for initially adopting the rules continue to exist. The rules continue to be essential in implementing the provisions of Texas Occupations Code, Chapter 1304. Based on the Department's review, however, the Commission may propose that amendments be made which may be helpful in clarifying statutory and administrative rule requirements.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was published in the September 22, 2006, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on October 23, 2006. No public comments were received.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 77, Service Contract Providers.

TRD-200606782
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 18, 2006

♦ ♦ ♦

The Texas Commission of Licensing and Regulation ("Commission") filed a notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code ("TAC"), Chapter 79, Weather Modification in accordance with the requirements of Texas Government Code, §2001.039. The Notice of Intent to Review was published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 8017).

In accordance with the requirements of Texas Government Code, §2001.039, the Texas Department of Licensing and Regulation (Department) reviewed the administrative rules of 16 TAC Chapter 79, Weather Modification to determine if the rules were obsolete, reflect current legal and policy considerations, and reflect current procedures of the Department.

The Department's review determined that the reasons for initially adopting the rules continue to exist. The rules continue to be essential in implementing the provisions of Texas Agriculture Code, Chapters 301 and 302. Based on the Department's review, however, the Commission may propose that amendments be made which may be helpful in clarifying statutory and administrative rule requirements.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Commission in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was published in the September 15, 2006, issue of the *Texas Register* and distributed to persons internal and external to the agency. The public comment period closed on October 16, 2006. No public comments were received.

The rules are re-adopted by the Commission in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 79, Weather Modification.

TRD-200606783
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 18, 2006

♦ ♦ ♦

Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the October 6, 2006 issue of the *Texas Register* (31 TexReg 8389), the Texas Wa-

ter Development Board (board) has reviewed and considered for readoption, revision, or repeal Title 31 of the Texas Administrative Code (TAC), Part 10, Chapter 360, Designation of River and Coastal Basins, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections since they are necessary to carry out the powers and duties of the Board and to define and designate river basins and watersheds by rule. This completes the board's review of 31 TAC Chapter 360, Designation of River and Coastal Basins.

TRD-200606651
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: December 13, 2006

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 7 TAC §84.209(8)(A)

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Other insurance paid to the insurance company $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and/or registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____ $_____
   Total other charges and amounts paid to others on my behalf $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for* *$7.00* *[~~$5.00~~] of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[*Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.*]

Figure: 7 TAC §84.209(8)(B)

ITEMIZATION OF AMOUNT FINANCED

1.	Cash price [Optional additional description: "(including any accessories, services, and taxes)"]		$_____(1)
2.	Downpayment (A + B) =		
	A. [*If netting add*: (if negative, enter "0" and see Line 4.A. below)]		
	Gross trade-in	$_____	
	- payoff by seller	$_____	
	= net trade-in	$_____	
	B. [*If not netting add*: (if negative enter "0" and see Line 4.A. below)]		
	+ cash	$_____	
	+ Mfrs. Rebate	$_____	
	+ other (describe) _____	$_____	
	Total downpayment		$_____(2)
3.	Unpaid balance of cash price (1 minus 2)		$_____(3)
4.	Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):		
	A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____	$_____	
	B. Cost of physical damage insurance paid to insurance company	$_____	
	C. Cost of optional coverages with physical damage insurance paid to insurance company	$_____	
	D. Cost of optional credit insurance paid to insurance company or companies Life Disability	$_____	
	E. Other insurance paid to the insurance company	$_____	
	F. Official fees paid to government agencies	$_____	
	G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)]	$_____	
	H. Other taxes [*Optional addition*: (if not included in cash price)]	$_____	
	I. Government license and/or registration fees	$_____	
	J. Government certificate of title fee	$_____	
	K. Government vehicle inspection fees	$_____	
	L. Deputy service fee paid to dealer	$_____	
	M. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]**	$_____	
	N. Other charges (Seller must identify who is paid and describe purpose) to_____for_____	$_____	
	to_____for_____	$_____	
	to_____for_____	$_____	
	Total Itemized Charges upon which the Finance Charge is assessed		$_____(4)
5.	Total Unpaid Balance Plus Itemized Charges Upon which the Finance Charge is assessed. (3+4)		$_____(5)
6.	Total Sales Tax (Upon Which No Finance Charge is Assessed)		$_____(6)
7.	**Amount Financed** (5+6)		$_____(7)
	Finance Charge (Not Assessed Upon Sales Tax)		$_____

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for $7.00 ~~[$5.00]~~ of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller.]

[Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.]

Figure: 7 TAC §84.210(b)

MOTOR VEHICLE RETAIL INSTALLMENT SALES CONTRACT

(Optional: DATE _____)

BUYER _____
ADDRESS _____
CITY _____ STATE____ZIP_____
PHONE _____

SELLER/CREDITOR_____
ADDRESS _____
CITY_____ STATE____ZIP_____
PHONE _____

The Buyer is referred to as "I" or "me." The Seller is referred to as "you" or "your." This contract may be transferred by the Seller.

PROMISE TO PAY

The credit price is shown below as the "Total Sales Price." The "Cash Price" is also shown below. By signing this contract, I choose to purchase the motor vehicle on credit according to the terms of this contract. I agree to pay you the Amount Financed, Finance Charge, and any other charges in this contract. I agree to make payments according to the Payment Schedule in this contract. If more than one person signs as a buyer, I agree to keep all the promises in this agreement even if the others do not.

I have thoroughly inspected, accepted, and approved the motor vehicle in all respects.

MOTOR VEHICLE IDENTIFICATION

Stock No.	Year	Make	Model	Vehicle Identification Number	License Number (if applicable)	☐ New ☐ Demonstrator ☐ Factory Official/Executive ☐ Used	USE FOR WHICH PURCHASED ☐ PERSONAL, FAMILY OR HOUSEHOLD ☐ BUSINESS OR COMMERCIAL ☐ AGRICULTURAL

Trade-in: Year_____ Make_____ Model_____ VIN_____ License No._____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.	**Total Sale Price** The total cost of my purchase on credit, including down payment of $_____
%	$	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the motor vehicle being purchased.

Late Charge: [**True daily earnings:**] (Option A:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the past due amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment. [**Scheduled Installment Earnings Method or sum of the periodic balances:**] (Option A:) If I do not pay my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge on the past due amount at the contract rate. (Option B:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge at the rate of _____% per year on the late amount. The late charge on the past due amount will be earned from the due date to the date that it is paid. (Option C:) If you do not receive my entire payment within 15 days after it is due (10 days if I am buying a heavy commercial vehicle), I will pay a late charge of _____% of the scheduled payment.

Prepayment: [**True daily earnings method:**] If I pay all that I owe early, I will not have to pay a penalty. [**Sum of the periodic balances method:**] I can pay all that I owe early. If I do so, I can get a refund of part of the Finance Charge.

Additional Information: I will refer to this document for information about nonpayment, default, security interests, any required repayment in full before the scheduled date, and prepayment refunds.

ITEMIZATION OF AMOUNT FINANCED

1. Cash price [Optional additional description: "(including any accessories, services, and taxes)"] $_____(1)

2. Downpayment =
[*If netting add*: (if negative, enter "0" and see Line 4.A. below)]
Gross trade-in $_____
- payoff by seller $_____
= net trade-in $_____
[*If not netting add*: (if negative enter "0" and see Line 4.A. below)]
+ cash $_____
+ Mfrs. Rebate $_____
+ other (describe) _____ $_____
Total downpayment $_____(2)

3. Unpaid balance of cash price (1 minus 2) $_____(3)

4. Other charges including amounts paid to others on my behalf (Seller may keep part of these amounts.):
   A. Net trade-in payoff [*Alternative caption*: "prior credit or lease balance"] to _____ $_____
   B. Cost of physical damage insurance paid to insurance company $_____
   C. Cost of optional coverages with physical damage insurance paid to insurance company $_____
   D. Cost of optional credit insurance paid to insurance company or companies $_____
      Life
      Disability
   E. Other insurance paid to the insurance company $_____
   F. Official fees paid to government agencies $_____
   G. Dealer's inventory tax [*Optional addition*: (if not included in cash price)] $_____
   H. Sales tax [*Optional addition*: (if not included in cash price)] $_____
   I. Other taxes [*Optional addition*: (if not included in cash price)] $_____
   J. Government license and/or registration fees $_____
   K. Government certificate of title fee $_____
   L. Government vehicle inspection fees $_____
   M. Deputy service fee paid to dealer $_____
   N. **Documentary fee. A documentary fee is not an official fee. A documentary fee is not required by law, but may be charged to buyers for handling documents and performing services relating to the closing of a sale. A documentary fee may not exceed $50. This notice is required by law. [*Option to insert Spanish translation of disclosure here.*]** $_____
   O. Other charges (Seller must identify who is paid and describe purpose)
      to_____for_____ $_____
      to_____for_____ $_____
      to_____for_____ $_____
   Total other charges and amounts paid to others on my behalf $_____(4)

5. **Amount Financed** (3 + 4) $_____(5)

[*Optional Caption*: Taxes, title fee, license fee, and any state inspection fee (*except for* $7.00 [~~$5.00~~] *of each such inspection fee that will be retained by Seller*) will be paid by Seller to government agencies. Documentary fee and deputy service fee will be retained by Seller and the seller may also retain parts of the insurance, service contracts, and other charges.]

[***Note: A creditor may delete portions of the figure applicable to any insurance premiums that are not financed in the contract and may also delete other inapplicable portions.***]

DEFERRED DOWNPAYMENT(S)	
AMOUNT	**DATE DUE**

MODEL CLAUSE FOR PHYSICAL DAMAGE INSURANCE

PROPERTY INSURANCE: I must keep the collateral insured against damage or loss in the amount I owe. I must keep this insurance until I have paid all that I owe under this contract. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas. I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss.

[Note: The following optional provisions are included for Creditors who finance physical damage insurance. Creditors who do not routinely finance Physical Damage coverage, or who are not financing it in a particular transaction, may delete the remaining disclosures in this Figure. A creditor may also delete those portions below that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

If any insurance is included below, policies or certificates from the insurance company will describe the terms, conditions and deductibles.

A. Physical damage insurance. If you obtain physical damage insurance, the coverages, terms and premiums for these terms are set forth below.

Coverage	Term in Months	Premium
Collision	___	☐$_____
Comprehensive	___	☐$_____
Fire, Theft, and Combined Additional Coverage	___	☐$_____
Other	___	☐$_____

B. Optional coverages with physical damage insurance. If I have chosen this insurance, the premiums for the initial _____ month term are itemized below. ***[Note: alternatively, these optional coverages may be disclosed as part of Figure: 7 TAC §84.209(12).]***

☐$_____ Towing and Labor Costs Reimbursement ☐$_____ Rental Reimbursement

☐$_____ Other:_____

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner. If the premium is for a required coverage, I have the option, for a period of 10 days from the date I receive a copy of this contract, of furnishing that coverage through existing policies of insurance or by obtaining like coverage from any insurance company authorized to do business in Texas.

I agree to purchase the above checked coverages.

Buyer's Signature: _____ Date: _____

MODEL CLAUSE FOR OPTIONAL INSURANCE COVERAGES

Optional insurance coverages. The insurance described below is not required to obtain credit. It will not be provided unless I sign and agree to pay the extra cost. ***[At Creditor's Option, the following may be added:]*** My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

Coverage	Term in Months	Premium
GAP*	_____	☐ $_____
Invol. Unemployment	_____	☐ $_____
_____	_____	☐ $_____
Liability Insurance	_____	☐ $_____

$_____ per person $_____ property damage
$_____ per accident

*If the motor vehicle is determined to be a total loss, GAP Insurance will pay you the difference between the proceeds of my basic collision policy and the amount I owe on the motor vehicle, minus my deductible. I can cancel that insurance without charge for 10 days from the date of this contract.

If the box next to a premium for an insurance coverage included above is marked, that premium is not fixed or approved by the Texas Insurance Commissioner.

I want the optional coverages for which premiums are included above.

Buyer's Signature: _____ Date: _____

[Note: A creditor who does not routinely finance optional coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.]

MODEL CLAUSE FOR OPTIONAL CREDIT LIFE AND ACCIDENT AND HEALTH (DISABILITY) INSURANCE

Optional credit life and credit disability insurance. Credit life insurance and credit disability insurance are not required to obtain credit. They will not be provided unless I sign and agree to pay the extra cost. [***At Creditor's Option, the following may be added:***] My decision to buy or not buy these insurance coverages will not be a factor in the credit approval process.

☐Credit Life, one buyer $_____ ☐Credit Life, both buyers $_____ Term _____
☐Credit Disability, one buyer $_____ ☐Credit Disability, both buyers $_____ Term _____

[***Optional additional sentence for balloon payment contracts:***] Credit Life Insurance is for the scheduled term of this contract. Credit Disability Insurance covers the first ____ payments and does not cover the last scheduled payment. [***Optional additional language for true daily earnings method contracts:***] Credit life insurance pays only the amount I would owe if I paid all my payments on time. Credit disability insurance does not cover any increase in my payment or in the number of payments.

If the term of the insurance is 121 months or longer, the premium is not fixed or approved by the Texas Insurance Commissioner.

I want the insurance indicated above.
Buyer's Signature: _____ Date: _____
Co-Buyer's Signature: _____ Date: _____

[***Note: A creditor who does not routinely finance these coverages, or does not finance them in a particular transaction, may omit this figure. A creditor may also delete those portions of the Figure that pertain to coverages it does not routinely finance, or that pertain to coverages that it is not financing in a particular transaction.***]

LIABILITY INSURANCE

(OPTION A) THIS CONTRACT DOES NOT INCLUDE INSURANCE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.
(OPTION B) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS CONTRACT.
(OPTION C) UNLESS A CHARGE FOR LIABILITY INSURANCE IS INCLUDED IN THE ITEMIZATION OF AMOUNT FINANCED, ANY INSURANCE REFERRED TO IN THIS CONTRACT DOES NOT INCLUDE COVERAGE FOR PERSONAL LIABILITY AND PROPERTY DAMAGE CAUSED TO OTHERS.

Any change to this contract must be in writing. Both you and I must sign it. No oral changes to this contract are enforceable.

_____Buyer _____Co-Buyer

HOW YOU FIGURE THE FINANCE CHARGE

[**Regular Transaction using sum of the periodic balances method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the add-on method as defined by the Texas Finance Commission Rule. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. (Option A_2: Sales Tax Advance) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance and added as a lump sum to the unpaid principal balance for the full term of the contract. The add-on Finance Charge is calculated at a rate of $____ per $100.00. (Option B: Deferred Sales Tax) The Finance Charge will be calculated by using the add-on method. Add-on Finance Charge is calculated on the full amount of the unpaid principal balance subject to a finance charge and added as a lump sum to the unpaid principal balance subject to a Finance Charge for the full term of the contract. The add-on finance charge is calculated at a rate of $____ per $100.00.

[**True Daily Earnings Method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the true daily earnings method as defined by the Texas Finance Code. Under the true daily earnings method, the Finance Charge will be figured by applying the daily rate to the unpaid portion of the Amount Financed for the number of days the unpaid portion of the Amount Financed is outstanding. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. The daily rate is 1/365th of the contract rate. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. The daily rate is 1/365th of the contract rate. The unpaid principal balance subject to a finance charge does not include the late charges, sales tax, or returned check charges.

[**Scheduled Installment Earnings Method:**] (Option A_1: Sales Tax Advance) You figure the Finance Charge using the scheduled installment earnings method as defined by the Texas Finance Code. Under the scheduled installment earnings method, the Finance Charge is figured by applying the daily rate to the unpaid portion of the Amount Financed as if each payment will be made on its scheduled payment date. The daily rate is 1/365th of the Annual Percentage Rate. The unpaid portion of the Amount Financed does not include late charges or returned check charges. (Option A_2: Sales Tax Advance) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You will figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance does not include the late charges or returned check charges. (Option B: Deferred Sales Tax) The contract rate is _____%. This contract rate may not be the same as the Annual Percentage Rate. You figured the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid portion of the principal balance subject to a Finance Charge. You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. The unpaid principal balance subject to a Finance Charge does not include the late charges, sales tax, or returned check charges.

CONSUMER WARNING

[Scheduled Installment Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may obtain a partial refund of the finance charge. I will keep this contract to protect my legal rights.

[True Daily Earnings Method:] Notice to the buyer - I will not sign this contract before I read it or if it contains any blank spaces. I am entitled to a copy of the contract I sign. Under the law, I have the right to pay off in advance all that I owe and under certain conditions may save a portion of the finance charge. I will keep this contract to protect my legal rights.

BUYER'S ACKNOWLEDGEMENT OF CONTRACT RECEIPT

(OPTION A: **If the buyer's signature is dated)** I AGREE TO THE TERMS OF THIS CONTRACT. WHEN I SIGN THE CONTRACT, I WILL RECEIVE THE COMPLETED CONTRACT. IF NOT, I UNDERSTAND THAT A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION B: **If the buyer's signature is not dated)** I AGREE TO THE TERMS OF THIS CONTRACT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT. I RECEIVED THE COMPLETED CONTRACT ON _____ (MO.) (DAY) (YR.)

(OPTION C: **If the buyer's signature is not dated)** I SIGNED THIS CONTRACT ON _____ AND A COPY WILL BE MAILED TO ME WITHIN A REASONABLE TIME.

(OPTION D: **If the buyer's signature is dated or not dated)** I AGREE TO THE TERMS OF THIS CONTRACT AND ACKNOWLEDGE RECEIPT OF A COMPLETED COPY OF IT. I CONFIRM THAT BEFORE I SIGNED THIS CONTRACT, YOU GAVE IT TO ME, AND I WAS FREE TO TAKE IT AND REVIEW IT.

_____	_____	_____	_____
Buyer	Date	Seller	Date
_____	_____		
Co-Buyer	Date		

THIS CONTRACT IS NOT VALID UNTIL YOU AND I SIGN IT.

CONSUMER CREDIT COMMISSIONER NOTICE. To contact (insert authorized business name of retail seller, creditor or holder as appropriate) about this account, call (insert telephone number of retail seller, creditor, or holder as appropriate). This contract is subject in whole or in part to Texas law which is enforced by the Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207; www.occc.state.tx.us; (800) 538-1579, and can be contacted relative to any inquiries or complaints.

OTHER TERMS AND CONDITIONS

[Sum of the periodic balances method and Scheduled Installment Earnings Method:] HOW YOU CALCULATE MY FINANCE CHARGE REFUND IF I PREPAY If I prepay in full, I may be entitled to a refund of part of the Finance Charge. **[Sum of the periodic balances method:]** You will figure the Finance Charge refund by using the sum of the periodic balances method as defined by the Texas Finance Commission rule. (Optional: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge Refund will be computed upon the entire Finance Charge minus the Acquisition Cost. I will not get a refund if it is less than $1.00.) (Additional Option for heavy commercial vehicle: You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule. The Finance Charge refund will be computed based upon the entire Finance Charge calculated using the sum of the periodic balances method. Then you will subtract the Acquisition Cost from that amount. I will not get a refund if it is less than $1.00.) **[Scheduled Installment Earnings Method:]** You will figure the Finance Charge refund by the scheduled installment earnings method as defined by the Texas Finance Commission rule. (Optional: You will figure my refund by deducting earned finance charges from the Finance Charge. You will figure earned finance charges by applying a daily rate to the unpaid principal balance as if I paid all my payments on the date due. If I prepay between payment due dates, you will figure earned finance charges for the partial payment period. You do this by counting the number of days from the due date of the prior payment through the date I prepay. You then multiply that number of days times the daily rate. The daily rate is 1/365th of the Annual Percentage Rate. You will also add the acquisition cost of $25 (or $150 for a heavy commercial vehicle) to the earned finance charge. I will not get a refund if it is less than $1.00.) **[Flexible contract forms designed to accommodate alternative methods:]** You will figure the Finance Charge refund using the sum of the periodic balances method as defined by the Texas Finance Commission rule if: this contract is a Regular Payment Contract as defined by the Texas Finance Commission rule, and this contract does not have a term greater than 61 months. If this contract is not a Regular Payment Contract or if it has a term greater than 61 months, you will figure the Finance Charge refund using the scheduled installment earnings method as defined by the Texas Finance Commission rule. I will not get a refund if it is less than $1.00.

HOW YOU WILL APPLY MY PAYMENTS [True daily earnings method:] You will apply my payments in the following order:

1. earned but unpaid finance charge; and
2. anything else I owe under this agreement.

HOW LATE OR EARLY PAYMENTS CHANGE WHAT I MUST PAY [True daily earnings method:] You based the Finance Charge, Total of Payments, and Total Sale Price as if all payments were made as scheduled. If I do not timely make all my payments in at least the correct amount, I will have to pay more Finance Charge and my last payment will be more than my final scheduled payment. If I make scheduled payments early, my Finance Charge will be reduced (less). If I make my scheduled payments late, my Finance Charge will increase.

INTEREST AFTER MATURITY If I don't pay all I owe when the final payment becomes due, or I do not pay all I owe if you demand payment in full under this contract, I will pay an interest charge on the amount that is still unpaid. That interest charge will be the higher rate of 18% per year or the maximum rate allowed by law, if that rate is higher. The interest charge for this amount will begin the day after the final payment becomes due.

SPECIAL PROVISIONS FOR BALLOON PAYMENT CONTRACTS A balloon payment is a scheduled payment more than twice the amount of the average of my scheduled payments, other than the downpayment, that are due before the balloon payment.

(Paying the balloon payment under Texas Finance Code §348.123(a)) I can pay all I owe when the balloon payment is due and keep my motor vehicle.

(Option A: Refinancing the balloon payment) If I buy the motor vehicle primarily for personal, family, or household use, I can enter into a new written agreement to refinance the balloon payment when due without a refinancing fee. If I refinance the balloon payment, my periodic payments will not be larger or more often than the payments in this contract. The annual percentage rate in the new agreement will not be more than the Annual Percentage Rate in this contract. This provision does not apply if my Payment Schedule has been adjusted to my seasonal or irregular income.

(Option B: Special right to refinance balloon payment under Texas Finance Code §348.123(b)(5)(b)(iii)) I can enter into a new agreement to refinance my last installment if I am not in default. I can refinance at an annual percentage rate up to 5 points greater than the Annual Percentage Rate shown in this contract. The rate will not be more than applicable law allows. The new agreement will allow me to refinance the last installment for at least 24 months with equal monthly payments. You and I can also agree to refinance the last installment over another time period or on a different payment schedule.

AGREEMENT TO KEEP MOTOR VEHICLE INSURED I agree to have physical damage insurance covering loss or damage to the vehicle for the term of this contract. The insurance must cover your interest in the vehicle. (Optional Language Provision: The insurance must include collision coverage and either comprehensive or fire, theft, and combined additional coverage.)

YOUR RIGHT TO PURCHASE REQUIRED INSURANCE IF I FAIL TO KEEP THE MOTOR VEHICLE INSURED If I fail to give you proof that I have insurance, you may buy physical damage insurance. You may buy insurance that covers my interest and your interest in the motor vehicle, or you may buy insurance that covers your interest only. I will pay the premium for the insurance and a finance charge at the contract rate. If you obtain collateral protection insurance, you will mail notice to my last known address shown in your file.

PHYSICAL DAMAGE INSURANCE PROCEEDS I must use physical damage insurance proceeds to repair the motor vehicle, unless you agree otherwise in writing. However, if the motor vehicle is a total loss, I must use the insurance proceeds to pay what I owe you. I agree that you can use any proceeds from insurance to repair the motor vehicle, or you may reduce what I owe under this contract. If you apply insurance proceeds to the amount I owe, they will be applied to my payments in the reverse order of when they are due. If my insurance on the motor vehicle or credit insurance doesn't pay all I owe, I must pay what is still owed. Once all amounts owed under this contract are paid, any remaining proceeds will be paid to me.

RETURNED INSURANCE PREMIUMS AND SERVICE CONTRACT CHARGES **[True daily earnings method:]** If you get a refund on insurance or service contracts, or other contracts included in the cash price, you will subtract it from what I owe. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me. **[Scheduled installment earnings method or sum of the periodic balances:]** If you get a refund of insurance or service contract charges, you will apply it and the unearned finance charges on it in the reverse order of the payments to as many of my payments as it will cover. Once all amounts owed under this contract are paid, any remaining refunds will be paid to me.

APPLICATION OF CREDITS Any credit that reduces my debt will apply to my payments in the reverse order of when they are due, unless you decide to apply it to another part of my debt. The amount of the credit and all finance charge or interest on the credit will be applied to my payments in the reverse order of my payments.

TRANSFER OF RIGHTS You may transfer this contract to another person. That person will then have all your rights, privileges, and remedies.

SECURITY INTEREST To secure all I owe on this contract and all my promises in it, I give you a security interest in:

- the motor vehicle including all accessories and parts now or later attached (Optional: and any other goods financed in this contract);
- all insurance proceeds and other proceeds received for the motor vehicle;
- any insurance policy, service contract or other contract financed by you and any proceeds of those contracts; and
- any refunds of charges included in this contract for insurance, or service contracts.

This security interest also secures any extension or modification of this contract. The certificate of title must show your security interest in the motor vehicle.

USE AND TRANSFER OF THE MOTOR VEHICLE I will not sell or transfer the motor vehicle without your written permission. If I do sell or transfer the motor vehicle, this will not release me from my obligations under this contract, and you may charge me a transfer of equity fee of $25 ($50 for a heavy commercial vehicle). I will promptly tell you in writing if I change my address or the address where I keep the motor vehicle. I will not remove the motor vehicle (Optional: motor vehicle or other collateral) from Texas for more than 30 days unless I first get your written permission.

CARE OF THE MOTOR VEHICLE I agree to keep the motor vehicle free from all liens and claims except those that secure this contract. I will timely pay all taxes, fines, or charges pertaining to the motor vehicle. I will keep the motor vehicle in good repair. I will not allow the motor vehicle to be seized or placed in jeopardy or use it illegally. I must pay all I owe even if the motor vehicle is lost, damaged or destroyed. If a third party takes a lien or claim against or possession of the motor vehicle, you may pay the third party any cost required to free the motor vehicle from all liens or claims. You may immediately demand that I pay you the amount paid to the third party for the motor vehicle. If I do not pay this amount, you may repossess the motor vehicle and add that amount to the amount I owe. If you do not repossess the motor vehicle, you may still demand that I pay you, but you cannot compute a finance charge on this amount.

DEFAULT I will be in default if:

- I do not pay any amount when it is due;
- I break any of my promises in this agreement;
- I allow a judgment to be entered against me or the collateral; or
- I file bankruptcy, bankruptcy is filed against me, or the motor vehicle becomes involved in a bankruptcy.

If I default, you can exercise your rights under this contract and your other rights under the law.

LATE CHARGE I will pay you a late charge as agreed to in this contract when it accrues.

REPOSSESSION If I default, you may repossess the motor vehicle from me if you do so peacefully. If any personal items are in the motor vehicle, you can store them for me and give me written notice at my last address shown on your records within 15 days of discovering that you have my personal items. If I do not ask for these items back within 31 days from the day you mail or deliver the notice to me, you may dispose of them as applicable law allows. Any accessory, equipment, or replacement part stays with the motor vehicle.

MY RIGHT TO REDEEM If you take my motor vehicle, you will tell me how much I have to pay to get it back. If I do not pay you to get the motor vehicle back, you can sell it or take other action allowed by law. My right to redeem ends when the motor vehicle is sold or you have entered into a contract for sale or accepted the collateral as full or partial satisfaction of a contract.

DISPOSITION OF THE MOTOR VEHICLE If I don't pay you to get the motor vehicle back, you can sell it or take other action allowed by law. You will send me notice at least 10 days before you sell it. You can use the money you get from selling it to pay allowed expenses and to reduce the amount I owe. Allowed expenses are expenses you pay as a direct result of taking the motor vehicle, holding it, preparing it for sale, and selling it. If any money is left, you will pay it to me unless you must pay it to someone else. If the money from the sale is not enough to pay all I owe, I must pay the rest of what I owe you plus interest. If you take or sell the motor vehicle, I will give you the certificate of title and any other document required by state law to record transfer of title.

COLLECTION COSTS If you hire an attorney who is not your employee to enforce this contract, I will pay reasonable attorney's fees and court costs as the applicable law allows.

CANCELLATION OF OPTIONAL INSURANCE AND SERVICE CONTRACTS This contract may contain charges for insurance or service contracts or for services included in the cash price. If I default, I agree that you can claim benefits under these contracts to the extent allowable, and terminate them to obtain refunds of unearned charges to reduce what I owe or repair the motor vehicle.

YOUR RIGHT TO DEMAND PAYMENT IN FULL If I default, or you believe in good faith that I am not going to keep any of my promises, you can demand that I immediately pay all that I owe. You don't have to give me notice that you are demanding or intend to demand immediate payment of all that I owe.

IF YOU DEMAND I PAY ALL I OWE **[Sum of the periodic balances method or scheduled installment earnings method:]** If you demand that I pay you all that I owe, you will give me a credit of part of the Finance Charge as if I had prepaid in full.

INTEGRATION AND SEVERABILITY CLAUSE This contract contains the entire agreement between you and me relating to the sale and financing of the motor vehicle. If any part of this contract is not valid, all other parts stay valid.

LEGAL LIMITATIONS ON YOUR RIGHTS If you don't enforce your rights every time, you can still enforce them later. You will exercise all of your rights in a lawful way. I don't have to pay finance charge or other amounts that are more than the law allows. This provision prevails over all other parts of this contract and over all your other acts.

APPLICABLE LAW Federal law and Texas law apply to this contract.

SELLER'S DISCLAIMER OF WARRANTIES **Unless the seller makes a written warranty, or enters into a service contract within 90 days from the date of this contract, the seller makes no warranties, express or implied, on the motor vehicle, and there will be no implied warranties of merchantability or of fitness for a particular purpose. This provision does not affect any warranties covering the motor vehicle that the motor vehicle manufacturer may provide.**

NOTICE: ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (This provision applies to this contract only if the motor vehicle financed in the contract was purchased for personal, family, or household use.)

The rates of this contract are negotiable. The seller may assign or otherwise sell this contract and receive a discount or other payment for the difference between the rate, charges, or balance.

In this box only, the word "you" refers to the Buyer

Used Car Buyers Guide. The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.
Spanish Translation:

Guía para compradors de vehículos usados. La información que ve en el formulario de la ventanilla para este vehículo forma parte del presente contrato. La información del formulario de la ventanilla deja sin efecto toda disposición en contrario contenida en el contrato de venta.

Figure: 7 TAC §90.404(a)(7)

TEXAS HOME EQUITY NOTE
(Fixed Rate – Second Lien)

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER_____
ADDRESS _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____
_____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in my homestead.
Late Charge: [~~(Scheduled Installment Earnings Method):~~] If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge. I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

This loan is an Extension of Credit defined by Section 50(a)(6), Article XVI of the Texas Constitution. Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

[~~Scheduled Installment Earnings Method:~~]If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may be different from the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any charges I owe other than principal and interest.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the homestead unless you agree in writing;
d. I sell, lease, or dispose of the homestead;
e. I use the homestead for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because the market value of the homestead decreases or because I default under any indebtedness not secured by the homestead.

8. PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep my homestead insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. We will insure the homestead for the lesser amount of the value of the property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

Credit property insurance is not required to obtain credit.

☐ Property Insurance $_____ Term _____

9. CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it by first class mail.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the homestead is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice of acceleration (i.e., payment of all I owe at once). This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by law, including Section 50(a)(6), Article XVI of the Texas Constitution. These expenses include, for example, reasonable attorneys' fees. I understand that these fees are not for maintaining or servicing this Loan Agreement.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower. You can enforce your rights under this Loan Agreement solely against the homestead. This Loan Agreement is made without personal liability against each owner of the homestead and the spouse of each owner unless the owner or spouse obtained this loan by actual fraud.

If this loan is obtained by actual fraud, I will be personally liable for the debt, including a judgment for any deficiency that results from your sale of the homestead for an amount less than is owed under this Loan Agreement.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than the law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. HOMESTEAD IS SUBJECT TO THE LIEN OF THE SECURITY DOCUMENT

The homestead described above by the property address is subject to the lien of the Security Document. I will see the separate Security Document for more information about my rights and responsibilities.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement. The Texas Constitution will be applied to resolve any conflict between the Texas Constitution and any other law.

20. COMPLAINTS AND INQUIRIES NOTICE

This lender is licensed and examined by the State of Texas – Office of Consumer Credit Commissioner. Call the Consumer Credit Hotline or write for credit information or assistance with credit problems.

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(800) 538-1579

21. COLLATERAL

The homestead described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document. This document must be signed at the office of the Lender, an attorney at law, or a title company.

I must receive a copy of this document after I have signed it. I agree to the terms of this loan agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.404(a)(8)

TEXAS HOME EQUITY SECURITY DOCUMENT
(Second Lien)

This Security Document is not intended to finance Borrower's acquisition of the Property.

THIS SECURITY DOCUMENT SECURES AN EXTENSION OF CREDIT AS DEFINED BY SECTION 50(a)(6), ARTICLE XVI OF THE TEXAS CONSTITUTION.

~~[NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.~~]

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have extended credit to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the promissory Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "My Homestead" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Extension of Credit" means the debt evidenced by the Note, as defined by Section 50(a)(6), Article XVI of the Texas Constitution and all the documents executed in connection with the debt.

(I) "Riders" means all Riders to this Security Document that I execute. The Riders include *(check box as applicable):*

☐ Texas Home Equity Condominium Rider
☐ Texas Home Equity Planned Unit Development Rider
☐ Other: _____

(J) "Applicable Law" means all controlling applicable federal, Texas and local constitutions, statutes, regulations, administrative rules, local ordinances, judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or My Homestead by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Security Document.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: (i) damage or destruction of My Homestead; (ii) condemnation or other taking of all or any part of My Homestead; (iii) conveyance instead of condemnation; or (iv) misrepresentations or omissions related to the value or condition of My Homestead.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note plus (ii) any amounts under this Security Document.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA"

refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of me" means any party that has taken title to My Homestead, whether or not that party has assumed my obligations under the Loan Agreement.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this loan, I give you a security interest in My Homestead including existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. This security interest is intended to be limited to the homestead property and not other collateral, as required under the Texas Constitution.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, My Homestead located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in My Homestead includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the property, insurance refunds, and proceeds. To the extent required by law, the security interest is limited to homestead property. No additional real or personal property secures the Loan Agreement.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I warrant that I own My Homestead and have the right to grant you an interest in it. I also warrant that My Homestead is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to My Homestead. I will be responsible for your losses that result from a conflicting ownership right in My Homestead. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the loan only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in My Homestead under the Loan Agreement;
b. leasehold payments or Ground Rents on My Homestead, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to My Homestead that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on My Homestead, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of My Homestead is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to My Homestead against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in My Homestead, my contents in My Homestead or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of My Homestead, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore My Homestead unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon My Homestead you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon My Homestead, fail to respond to the offer of settlement, or you foreclose on My Homestead, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering My Homestead.

You may apply the proceeds to repair or restore My Homestead or to the amount that I owe.

HOMESTEAD

I now occupy and use the property secured by this Security Document as my Texas homestead.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair My Homestead, allow it to deteriorate, or commit waste. Whether or not I live in My Homestead, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to My Homestead to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring My Homestead only if you release the insurance or condemnation proceeds for the damage to or the taking of My Homestead. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of My Homestead even if there are not enough proceeds to complete the work. You or your agent may inspect My Homestead. You may inspect the interior of My Homestead with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

CONDITIONS CAUSING ACTUAL FRAUD

I commit actual fraud under Section 50(a)(6)(C), Article XVI of the Texas Constitution if I or any person acting at my direction or with my knowledge or consent:

a. gives you materially false, misleading, or inaccurate information or statements;
b. fails to provide material information regarding the loan; or
c. commits any other action or inaction that is determined to be actual fraud.

Material representations include statements concerning my occupancy of My Homestead as a Texas homestead, the statements and promises contained in any document that I sign in connection with the Loan Agreement, and the execution of an acknowledgment of fair market value of My Homestead as described in the Loan Agreement. If I commit actual fraud I will be in default of the Loan Agreement and may be held personally liable.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in My Homestead, including protecting or assessing the value of My Homestead, and securing or repairing My Homestead. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in My Homestead or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon My Homestead.

In order to protect your interest in My Homestead, you may:

a. pay amounts that are secured by a lien on My Homestead which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter My Homestead to secure it. To secure My Homestead, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure My Homestead. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If My Homestead is damaged, Miscellaneous Proceeds will be applied to restore or repair My Homestead. You will only do this if your interest in My Homestead will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect My Homestead to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in My Homestead will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of My Homestead. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of My Homestead immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of My Homestead immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:
    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of My Homestead immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon My Homestead you may apply Miscellaneous Proceeds either to restore or repair My Homestead, or to the amount I owe.

Damage to My Homestead caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to My Homestead and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair My Homestead or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor;
c. only grants the person's interest in My Homestead under the terms of this Security Document; and
d. grants the person's interest in My Homestead to comply with the requirements of Section 50(a)(6)(A), Article XVI of the Texas Constitution.

The lien against My Homestead is a voluntary lien and is a written agreement that shows the consent of each owner and each owner's spouse. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in My Homestead.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to My Homestead address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in My Homestead" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of My Homestead is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of My Homestead under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in My Homestead and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in My Homestead will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in My Homestead without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA. If a different company services the Loan Agreement, the servicing duties to me will be transferred.

You or I must give notice of any violation of the Loan Agreement to the other and the opportunity to address the alleged violation before starting or joining any legal action. You and I will give each other a reasonable amount of time to address the alleged violation. If the law provides a specified time period that must be given to address a violation, that time period will be a reasonable time for purposes of this paragraph. Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

You and I intend to strictly follow the provisions of the Texas Constitution that relate to the Loan Agreement (Section 50(a)(6), Article XVI of the Texas Constitution).

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law. The Loan Agreement is being made on the condition that you have a reasonable amount of time to correct any violation of Applicable Law. I will notify you of any violation and give you a reasonable amount of time to comply before taking any action. I will cooperate with your reasonable effort to correct the Loan Agreement. You will forfeit all principal and interest as required by Applicable Law if you have:

a. received my notice;
b. had a reasonable amount of time to correct the violation; and
c. failed to correct the violation.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of the Texas Constitution and Texas law. If any promise, payment, duty or provision of the Loan Agreement is in conflict with the Applicable Law, then the promise, payment, duty or provision will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right-to-comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where My Homestead is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in My Homestead. I will not do or allow anyone else to do, anything affecting My Homestead:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of My Homestead.

The presence, use, or storage on My Homestead of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of My Homestead are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving My Homestead and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of My Homestead.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting My Homestead is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of My Homestead.

You will inform me of my right to reinstate after acceleration and my right to bring a court action to contest the alleged default or to assert any other defense to the acceleration and sale. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell My Homestead or seek other remedies allowed by Applicable Law without further notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

This lien against My Homestead may be foreclosed upon only by a court order. You may, at your option, follow any rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Section 50(a)(6), Article XVI of the Texas Constitution ("Rules"). The power of sale granted by the Loan Agreement will be exercised according to the Rules. I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding.

POWER OF SALE

You have a fully enforceable lien on My Homestead. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure except as limited by the Texas Supreme Court. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell My Homestead to the highest bidder for cash in one or more parcels and in any order the Trustee determines. You may purchase My Homestead at any sale. The Rules will prevail in a conflict between the procedures and the Rules. If a conflict arises, the conflicting provision will be corrected in order to comply.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to My Homestead that cannot be defeated; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to My Homestead against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If My Homestead is sold through a foreclosure sale governed by this Section, I or any person in possession of My Homestead through me, will give up possession of My Homestead without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

You will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien. My acceptance of the release or endorsement and assignment will end all of your duties under Section 50(a)(6), Article XVI of the Texas Constitution.

NON-RECOURSE LIABILITY

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You are entitled to these rights whether you acquire the liens or debts by assignment or the holder releases them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document, subject to limitation of personal liability described below. The Texas Constitution provides that the Loan Agreement is given without personal liability against each owner of My Homestead and the spouse of each owner. Personal liability may be obtained if the Loan Agreement was obtained by actual fraud. This means that, unless actual fraud is found by a court, you are only able to enforce your rights under the Loan Agreement against My Homestead. You are not able to seek personal liability against the owner of My Homestead or the spouse of an owner. If the Loan Agreement is obtained by actual fraud, then I will be personally liable for the payment of any amounts due under the Loan Agreement. This means that a personal judgment could be obtained against me for a deficiency as a result of a foreclosure sale of My Homestead. A personal judgment would subject my other assets for the payment of the debt.

Unless prohibited by the Texas Constitution, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement;
b. affect your right to any promise or condition of the Loan Agreement.

PROCEEDS

I am not required to apply the proceeds of the Loan Agreement to repay another debt except a debt secured by My Homestead or a debt to another lender.

NO ASSIGNMENT OF WAGES

I have not assigned wages as security for the Loan Agreement.

ACKNOWLEDGMENT OF FAIR MARKET VALUE

You and I agreed in writing to the fair market value of My Homestead on the date of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, without any further act, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely, without liability, upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

WAIVER OF ADDITIONAL COLLATERAL

I agree that you waive all terms in any of your current or future loan documentation that:

a. creates a default of the Loan Agreement by a default of another obligation that is not secured by My Homestead;
b. provides for collateral other than My Homestead (including cross collateralization or dragnet provisions);
c. creates personal liability for me for the Loan Agreement (unless this loan was obtained by actual fraud); or
d. creates a personal guaranty.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. THIS DOCUMENT MUST BE SIGNED AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW OR A TITLE COMPANY. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

I MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN AGREEMENT WITHOUT PENALTY OR CHARGE.

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

_____(seal)
-Borrower

_____(seal)
-Borrower

(Acknowledgment on following page)

Figure: 7 TAC §90.503(c)(6)

"I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time, you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I paid the Loan Agreement in full."

Figure: 7 TAC §90.503(c)(14)

"If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan[,] charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial payment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property."

Figure: 7 TAC §90.504(a)(7)

PURCHASE MONEY NOTE
(Fixed Rate – Second Lien)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER_____
ADDRESS _____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS _____
_____

PROPERTY ADDRESS: _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the property.
Late Charge: [~~(Scheduled Installment Earnings Method):~~] If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment:(Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

1. BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule. True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

2. LATE CHARGE

[~~Scheduled Installment Earnings Method:~~] If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

3. AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

4. PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

5. FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas

Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

6. FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

7. DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default. You may not demand that I pay the loan in full solely because I default under any debt not secured by the Property.

8. **PROPERTY INSURANCE**

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

9. **CREDIT INSURANCE**

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower $_____ Credit Life, both borrowers $_____ Term _____

Credit Disability, one borrower $_____ Credit Disability, both borrowers $_____ Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

10. **MAILING OF NOTICES TO BORROWER**

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

11. DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding immediate payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

12. NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

13. COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

14. JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

15. USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

16. SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

17. PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me and may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

18. THIS NOTE SECURED BY A DEED OF TRUST

In addition to the protections given to the Note Holder under this Note, a Security Document, dated _____, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Document describes how and under what conditions I may be required to make immediate payment in full of any amounts that I owe under this Note.

19. APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

20. COMPLAINTS AND INQUIRIES NOTICE

The (name of Lender or Note Holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of Lender or Note Holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

In Person or U.S. Mail: 2601 North Lamar Boulevard, Austin, Texas 78705-4207
Telephone No.: (800) 538-1579
Fax No.: (512) 936-7610
E-mail: consumer.complaints@occc.state.tx.us
Website: www.occc.state.tx.us

21. COLLATERAL

The collateral described above by the property address is subject to the lien of the Security Document.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.504(a)(8)

PURCHASE MONEY SECURITY DOCUMENT
(Second Lien)

~~[NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.~~]

DEFINITIONS

(A) "Loan Agreement" means the Note, Security Document, deed of trust, any other related document, or any combination of those documents, under which you have made a loan to me.

(B) "Security Document" means this document, which is dated _____, together with all Riders to this document.

(C) "I" or "me" means _____, the grantor under this Security Document and the person who signed the Note ("Borrower").

(D) "You" means _____, the Lender and any holder entitled to receive payments under the Note.
Your address is _____. You are the beneficiary under this Security Document.

(E) "Trustee" is _____. Trustee's address is _____.

(F) "Note" means the Purchase Money Note signed by me and dated _____. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest. I have promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than _____(maturity date).

(G) "Property" means the real estate that is described below under the heading "Transfer of Rights in the Property."

(H) "Riders" means all Riders to this Security Document that I execute. The Riders include (*check box as applicable*):

☐ Texas Purchase Money Condominium Rider
☐ Texas Purchase Money Planned Unit Development Rider
☐ Other: _____

(I) "Applicable Law" means all controlling applicable federal, Texas and state constitutions, statutes, regulations, administrative rules, local ordinances, and judicial and administrative orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section _____ of this Security Document.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Security Document.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Document, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of me" means any party that has taken title to the Property, whether or not that party has assumed my obligations under the Loan Agreement.

(Q) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Security Document. Such an arrangement usually takes the form of a long-term "ground lease."

SECURED AGREEMENT

To secure this Loan Agreement I give you a security interest in the Property including existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

TRANSFER OF RIGHTS IN THE PROPERTY

I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

This Security Document secures:

a. repayment of the Note, and all extensions and modifications of the Note; and
b. the completion of my promises and agreements under the Loan Agreement.

I promise that I own the Property and have the right to grant you an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for your losses that result from a conflicting ownership right in the Property. Any default under my agreements with you will be a default of this Security Document.

YOU AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to you unpaid, you may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as you direct. You will apply my payments against the Loan Agreement only when they are received at the designated location. You may change the location for payments if you give me notice.

You may return any partial payment that does not bring the account current. You may accept any payment or partial payment that does not bring the account current without losing your rights to refuse full or partial payments in the future. I will not use any offset or claim against you to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay you an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over your security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance you require under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, you may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give you all notices of amounts to be paid. I will pay you the Funds for Escrow Items unless you, at any time, waive my duty to pay you. Any escrow waiver must be in writing. If you waive my duty to pay you the Funds, I will pay, at your direction, the amounts due for waived Escrow Items. If you require, I will give you receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If you grant me an escrow waiver, you may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, you may use any right given to you in the Loan Agreement. You may pay waived Escrow Items and require me to repay you. You may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If you cancel the waiver, I will pay you all Funds that are then required under this Section.

At any time you may collect and hold Funds in an amount:

a. to permit you to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount you may require under RESPA.

You will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including you, if your deposits are insured) or in any Federal Home Loan Bank.

You will timely pay Escrow Items as required by RESPA. You will not charge me a fee for maintaining or handling my escrow account. You are not required to pay me any interest on the amounts in my escrow account. You will give me an annual accounting of the Funds as required by RESPA. If there is a surplus in my escrow account, you will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, you will notify me, and I will pay you the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. You will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Security Document. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Security Document unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to you and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to you); or
c. obtain an agreement from the holder of the lien that is satisfactory to you.

If you determine that any part of the Property is subject to a lien that can take priority over this Security Document, you may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I will insure the current and future improvements to the Property against loss by fire, hazards included within the term "extended coverage," and any other hazards including earthquakes and floods, as you may require. I will keep this insurance in the amounts (including deductible levels) and for the periods that you require. You may change these insurance requirements during the term of the Loan Agreement. I have the right to choose an insurance carrier that is acceptable to you. You will exercise your right to disapprove reasonably.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. You may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, you may obtain insurance at your option and at my expense. You are not required to purchase any type or amount of insurance. Any insurance you buy will always protect you, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe you for the cost of any insurance that you buy under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date you made the payment. You will give me notice of the amounts I owe under this Section.

You may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name you as mortgagee or a loss payee. I will give you all insurance premium receipts and renewal notices, if you request. If I obtain any optional insurance to cover damage or destruction of the Property, I will name you as a loss payee. In the event of loss, I will give notice to you and the insurance company. You may file a claim if I do not file one promptly. You will apply insurance proceeds to repair or restore the Property unless your interest will be reduced or it will be economically unreasonable to perform the work. You may hold the insurance proceeds until you have had an opportunity to inspect the work and you consider the work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the work is completed. You will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if your interest will be reduced or if the work will be economically unreasonable to perform. You will pay me any excess insurance proceeds. You will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property you may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from you, then you may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or you foreclose on the Property, I assign to you:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

You may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless you and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if you release the insurance or condemnation proceeds for the damage to or the taking of the Property. You may release proceeds for the repairs and restoration in a single payment or in a series of payments as the work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the work. If this Security Document secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document. You or your agent may inspect the Property. You may inspect the interior of the Property with reasonable cause. You will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE SECURITY DOCUMENT

You may do whatever is reasonable to protect your interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. You may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect your interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect your interest in the Property, you may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

You may enter the Property to secure it. To secure the Property, you may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. You have no duty to secure the Property. You are not liable for failing to take any action listed in this Section. Any amounts you pay under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. You will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to you. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. You will only do this if your interest in the Property will not be reduced and if the work will be economically reasonable to perform. You will have the right to hold Miscellaneous Proceeds until you inspect the Property to ensure the work has been completed to your satisfaction. You must make the inspection promptly. You may release proceeds for the work in a single payment or in multiple payments as the work is completed. You are not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if your interest in the Property will be reduced or the work will be economically unreasonable to perform. You will pay me any excess Miscellaneous Proceeds. You will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

You will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. You will apply the Miscellaneous Proceeds even if all payments are current. You will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then you will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then you will apply Miscellaneous Proceeds to the amount I owe in the following manner:

    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

You and I can agree otherwise in writing. You will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, you may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If you give me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to you within thirty days, you may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, you will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

My successors and I will not be released from liability if you extend the time for payment or modify the payment schedule. If I pay late, you will not have to sue me or my successor to require timely future payments. You may refuse to (1) extend time for payment or (2) modify this Loan Agreement even if I request it. If you do not enforce your rights every time, you may enforce them later.

JOINT AND SEVERAL LIABILITY, SECURITY DOCUMENT EXECUTION, SUCCESSORS OBLIGATED

I understand that you may seek payment from me without first looking to any other person who signed the Note. Any person who signs this Security Document, but not the Note:

a. has no duty to pay the sums secured by this Security Document;
b. is not a surety or guarantor; and
c. only grants the person's interest in the Property under the terms of this Security Document.

The lien against the Property is a voluntary lien and is a written agreement that shows the consent of each owner. You and I may extend, modify, or make any arrangements with respect to the terms of the Loan Agreement. Upon your approval, my successor who assumes my duties in writing will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless you release me in writing. The Loan Agreement will extend to your assigns or successors.

EXTENSION OF CREDIT CHARGES

If an Applicable Law that sets a maximum charge is finally interpreted so that the interest, loan charges, or fees collected or to be collected with the Loan Agreement exceed the permitted amount, then you will:

a. reduce the amount to the amount permitted; or
b. refund the excessive amount to me.

You may choose to apply this refund to the amount I owe or pay it directly to me. If you apply the refund to the amount I owe, the refund will be treated as a partial prepayment.

If I default, you will be able to charge me reasonable fees paid to an attorney who is not your employee to protect your interest in the Property.

DELIVERY OF NOTICES

Under the Loan Agreement, you and I will give notices to each other in writing. Any notice under the Loan Agreement will be considered given to me when it is mailed by first class mail or when actually delivered to me at my address if given by another means. You will give notice to the Property address unless I provide you a different address. I will notify you promptly of any change of address. I will comply with any reasonable procedure for giving a change of address that you provide. There will only be one address for notice under the Loan Agreement. Notice to me will be considered notice to all persons who are obligated under the Loan Agreement unless Applicable Law requires a separate notice. I may give you notice by delivering or mailing it by first class mail to the address provided by you, unless you require a different procedure. You, however, will not receive notice under the Loan Agreement until you actually receive it. Legal requirements governing notices subject to the Loan Agreement will prevail over conditions in the Loan Agreement.

GOVERNING LAW AND SEVERABILITY

The Loan Agreement will be governed by Texas law and federal law. If any provision in the Loan Agreement conflicts with any legal requirement, all non-conflicting provisions will remain effective.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives sole discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, you will give me copies of all documents I sign.

TRANSFER OF INTEREST IN PROPERTY

"Interest in the Property" means any legal or beneficial interest. This term includes those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement (the intent of which is the transfer of title by me at a future date to a purchaser). If any part of the Property is sold or transferred without your prior written permission, you may require immediate payment of all I owe. You will not exercise this option if disallowed by Applicable Law. If you accelerate, you will give me notice. The notice of acceleration will allow me at least 21 days from the date the notice is given to pay all I owe. If I fail to timely pay all I owe, you may pursue any remedy allowed by the Loan Agreement without further notice or demand.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop you from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. You are paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. You are paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting your interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure you that your interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure you that my ability to pay what I owe will remain intact.

You may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without your permission.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between you and me or any third party will limit your ability to comply with your duties under the Loan Agreement and the Applicable Law.

You and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

You and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Your right to correct any violation will survive my paying off the Loan Agreement. My right to correct will override any conflicting provision of the Loan Agreement.

Your right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give you written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. You will have no obligation for an Environmental Cleanup.

ACCELERATION AND REMEDIES

You will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date you give me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

You will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, you have the option to require immediate payment in full of all I owe. If you are not paid all I owe, you may sell the Property or seek other remedies allowed by Applicable Law without further

notice. You may collect your reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that I have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due.

Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the costs of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Security Document. You and the receiver will be liable to account only for rents received.

POWER OF SALE

You have a fully enforceable lien on the Property. Your remedies for my default include an efficient means of foreclosure under the law. You and the Trustee have all powers to conduct a foreclosure. If you choose to use the power of sale, you will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. You will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or before the date in the notice, you, at your option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. You may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

RELEASE

Upon payment of all that I owe under this Loan Agreement, you will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the lien to a lender that is refinancing the Loan Agreement. If you cannot, you will provide me with a discharge and release of all obligation under the loan. I will pay only the cost of recording the release of lien.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

You are entitled to all rights, superior title, liens and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. You may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Security Document is responsible for each promise and duty in the Security Document.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or your right to collect all that I owe under the Loan Agreement; or
b. affect your right to any promise or condition of the Loan Agreement.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. You may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at your option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional or successor Trustee will receive, the title, rights, remedies, powers and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

DEFAULT

Any default of my agreements with you will be a default of this Security Document.

SUBROGATION

If I ask, you will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. You will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. You own these things whether the lien or debt is transferred to you or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Security Document cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

REQUEST FOR NOTICE OF DEFAULT
----------AND FORECLOSURE UNDER SUPERIOR----------
MORTGAGES OR SECURITY DOCUMENTS

You and I request that the holder of any mortgage, security document or other claim with a lien that has priority over this Security Document give you Notice, at your address listed on page 1 of this Security Document, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any Rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

_____ _____(seal)
-Borrower

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____

Printed Name:_____
(Please Complete)

_____(seal)
-Borrower

_____(seal)
-Borrower

STATE OF TEXAS
County of _____

Before me, a notary public, on this day personally appeared _____, known to me (or proved to me on the oath of _____ or through _____ _____) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____, 20____.

(Seal)

_____
Notary Public

Figure: 7 TAC §90.604(a)(12)

TEXAS HOME IMPROVEMENT MECHANIC'S LIEN CONTRACT FOR IMPROVEMENT AND POWER OF SALE

(Second Lien)

~~[NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.~~]

DATE_____
ACCOUNT/CONTRACT NO. _____

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker. "I" or "me" means the Owner.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies. "You" or "your" means the Contractor.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement and Power of Sale.

CONSTRUCTION OF IMPROVEMENTS

You agree to furnish and pay for all labor and material needed to complete the Work within _____ days from the date of this Contract. The Work will be performed on the Property in a good and workmanlike manner.

CONTRACT PRICE

I agree to pay, or cause to be paid, to you, or to your order, the sum of _____dollars (U.S. $_____) when the Work is completed.

TRANSFER OF LIEN

You transfer to Lender all of your rights and interests in this Contract.

COMPLETION BY CONTRACTOR, BUT NOT LENDER

You will complete the Work by the Completion Date. Lender is not responsible for completing the Work. Lender is not a guarantor of your performance. You will indemnify and hold Lender harmless against all claims related to the Work.

PARTIAL LIEN

If you do not complete the Work by the Completion Date in a good and workmanlike manner, then Lender will have a valid lien for the contract price, less the amount reasonably necessary to complete the Work. As an alternative, Lender may choose to complete the Work and the lien will be valid for the contract price.

CHANGES AND EXTRAS

All labor or material furnished outside of this Contract must be agreed upon in writing or it will be considered as performed under the original Contract and you will receive no extra money.

RECEIPTS AND RELEASES

If I ask, you will give me valid receipts and releases for the Work from any subcontractor, worker, and supplier.

NO WORK COMMENCED

This Contract is executed, acknowledged, and delivered before any labor has been performed and any material has been furnished for the Work.

TRUSTEE'S DUTIES

If you ask Trustee to foreclose this lien, Trustee will:

1. give notice of the foreclosure sale as required by the Texas Property Code;

2. sell and grant all or part of the Property "AS IS":

   a. to the highest bidder for cash;
   b. subject to prior liens and exceptions to conveyance and warranty; and
   c. without representation or warranty;

3. pay the proceeds of the sale, in this order:

   a. expenses of foreclosure, including Trustee's reasonable fee;
   b. the unpaid amount of principal, interest, attorneys' fees, and other charges due you;
   c. any amount required by law to be paid; and
   d. any balance to me; and

4. be indemnified by you for all costs, expenses, and liabilities incurred by Trustee in performance of Trustee's duties under this Contract.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Note: The following notice complies with Texas Property Code §41.007. In this notice, the terms "you" and "your" refer to the Owner.

IMPORTANT NOTICE: YOU AND YOUR CONTRACTOR ARE RESPONSIBLE FOR MEETING THE TERMS AND CONDITIONS OF THIS CONTRACT. IF YOU SIGN THIS CONTRACT AND YOU FAIL TO MEET THE TERMS AND CONDITIONS OF THIS CONTRACT, YOU MAY LOSE YOUR LEGAL OWNERSHIP RIGHTS IN YOUR HOME. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW.

_____
Owner

_____
Owner

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 ____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

ASSIGNMENT

This lien is transferred and assigned to __(third party lender)_____.

_____
Contractor

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 7 TAC §90.604(a)(15)

Mechanic's Lien Note
(Second Lien- Home Improvement)

ACCOUNT/CONTRACT NO. _____
CREDITOR/LENDER_____
ADDRESS (include county)_____
_____

DATE OF NOTE _____
BORROWER _____
ADDRESS (include county)_____
_____

PROPERTY ADDRESS: (include county) _____

A word like "I" or "me" means each person who signs as a Borrower. A word like "you" or "your" means the Lender or "Note Holder."

The Lender is _____. The Lender may sell or transfer this Note. The Lender or anyone who is entitled to receive payments under this Note is called the "Note Holder." You will tell me in writing who is to receive my payments.

Principal Amount:_____

Terms of Payment (principal and interest): _____

ANNUAL PERCENTAGE RATE The cost of my credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost me.	**Amount Financed** The amount of credit provided to me or on my behalf.	**Total of Payments** The amount I will have paid after I have made all payments as scheduled.
%	$	$	$

My Payment Schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due

Security: You will have a security interest in the following described property: (property description)_____
Late Charge: If any part of a payment is unpaid for 10 days after it is due, I may be charged 5% of the amount of payment.
Prepayment: (Scheduled Installment Earnings Method): If I pay off early, I may be entitled to a refund of part of the Finance Charge and I will not have to pay a penalty. **(True Daily Earnings Method):** If I pay off early, I will not have to pay a penalty.
Additional Information: See the contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

SECURITY FOR PAYMENT

The Deed of Trust and the Lien created in the Contract secure this Note.

DEFINITIONS

(A) "Owner" means (name of Owner), whose address is (address of Owner, including county). If Owner and Maker are not the same person, the word "Owner" includes Maker.

(B) "Contractor" means (name of Contractor), whose address is (address of Contractor, including county) and includes those to whom the Contractor has assigned or transferred Contractor's rights and remedies.

(C) "Lender" means (name of Lender), whose address is (address of Lender, including county) and includes those to whom the Lender has assigned or transferred Lender's rights and remedies.

(D) "Trustee" means (name of Trustee), whose address is (address of Trustee, including county).

(E) "Property" means the Property at (list address of the Property), whose legal description is (list legal description of the Property).

(F) "Work" means the construction project as agreed to in writing between the Owner and Contractor.

(G) "Completion Date" means (date on which the Work will be completed).

(H) "Contract" means this Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(I) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe you is _____ dollars (U.S. $_____) plus interest.

(J) "Loan Agreement" means the Note, Contract, and any other related document under which Lender has made a loan to me.

(K) "Applicable Law" means all controlling applicable federal, state, and local law.

(L) "Tenant at Sufferance" means a person who continues to possess the Property with no current right to possess it.

(M) "Forcible Detainer" means a lawsuit to remove a person from the Property.

(N) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amount under this Contract.

(O) "Successor in Interest" means any party that has taken title to the Property.

(P) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

BORROWER'S PROMISE TO PAY

Scheduled Installment Earnings Method: I promise to pay the Total of Payments to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

True Daily Earnings Method: I promise to pay the cash advance plus the accrued interest to the order of you. The "principal" or "cash advance" is $_____. This amount plus interest must be paid by _____ (maturity date). I will make payments to you at the address above or as you direct. I will make the payments on the dates and in the amounts shown in the Payment Schedule.

LATE CHARGE

If I don't pay all of a payment within 10 days after it is due, you can charge me a late charge. The late charge will be 5% of the scheduled payment.

AFTER MATURITY INTEREST

If I don't pay all I owe when the final payment becomes due, I will pay interest on the amount that is still unpaid. That interest will be the higher of the rate of 18% per year or the maximum rate allowed by law. That interest will begin the day after the final payment becomes due.

PREPAYMENT

Scheduled Installment Earnings Method: I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

True Daily Earnings Method: I can make any payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled.

FINANCE CHARGE AND REFUND METHOD

For contracts using Scheduled Installment Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not be paid a refund if the refund would be less than $1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using Scheduled Installment Earnings Method with prepayments option - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method

as defined by the Texas Finance Code to the unpaid cash advance. I may make a full or partial payment early without paying a penalty. My early payments will reduce the principal that I owe. The unpaid cash advance does not include the administrative fee, late charges, or returned check charges. If I make an early partial payment, the due date and amount of my next payment will not change unless you agree in writing.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my scheduled payments in the following order: (1) interest that is due, (2) principal, (3) any other charges I owe.

For contracts using True Daily Earnings Method - Section 342.301 rate loans: The annual rate of interest is ___%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment.

I have paid any points, administrative fee, or loan origination fee as prepaid interest. The administrative fee is earned at the time the loan is made and is not subject to refund. If I pay the loan in full early, you will refund any prepaid interest that would make the interest rate exceed the maximum rate allowed by law. Any refund will be credited to my account.

Any payment(s) that you accept after the final payment becomes due is not a renewal or extension of this Loan Agreement unless you agree in writing.

You will apply my payments as follows: (1) interest that is due, (2) principal, (3) any other charges I owe.

DEFERMENT

If I ask for more time to make any payment and you agree, I will pay more interest to extend the payment. The extra interest will be figured under the Finance Commission rules.

FEE FOR DISHONORED CHECK

I agree to pay you a fee of up to $30 for a returned check. You may add the fee to the amount I owe or collect it separately.

DEFAULT

I will be in default if:

a. I do not timely make a payment to the person or place you direct;
b. I break any promise I made in the Loan Agreement;
c. I allow a lien to be entered against the Property unless you agree in writing;
d. I sell, lease, or dispose of the Property;
e. I use the Property for an illegal purpose; or
f. you believe in good faith I am not going to keep any of my promises.

If there is more than one Borrower, each Borrower agrees to keep all of the promises in the Loan Agreement.

If I am in default, you will send me a written notice telling me how to cure the default. You must give me at least 21 days after the date on which the notice is mailed or delivered to cure the default.

PROPERTY INSURANCE

PROPERTY INSURANCE: I must keep the Property insured against damage or loss in at least the amount I owe. I may obtain property insurance from anyone I want or provide proof of insurance I already have. The insurer must be authorized to do business in Texas.

☐ **If this box is checked, the premium is not fixed or approved by the Texas Department of Insurance.**

I agree to give you proof of property insurance. I must name you as the person to be paid under the policy in the event of damage or loss. If I obtain the insurance through you, I will pay the premium shown below. However, I have 5 days from the date of this loan to furnish like (equivalent) coverage from another source. If I fail to meet any of these requirements, you may obtain collateral protection insurance at my expense. You will insure the Property for the lesser amount of the value of the Property or the amount of the debt. If you obtain collateral protection insurance, you will mail notice to my last known address.

☐ Property Insurance $_____ Term _____

CREDIT INSURANCE

Credit insurance is optional. Credit life insurance and credit disability insurance are not required to obtain credit. This insurance will not be provided unless I sign and agree to pay the extra cost. I will look to the insurance policy or certificate for the terms and description of benefits, exclusions, and premium rates.

Single Premium

Credit Life, one borrower	$_____	Credit Life, both borrowers	$_____	Term _____
Credit Disability, one borrower	$_____	Credit Disability, both borrowers	$_____	Term _____

☐ **If this box is marked, the premium for the insurance coverage(s) above is not fixed or approved by the Texas Insurance Commissioner.**

I want the insurance above.

Borrower's Signature: _____ Date: _____

Co-Borrower's Signature: _____ Date: _____

Monthly Premium

If I want credit life or credit disability insurance, I must sign below and pay the monthly premium. The monthly premium will be added to the monthly loan payment. If I do not pay the monthly premium, I will not have the insurance coverage.

I request the following insurance:

_____

Borrower's Signature Date

Premium Due with the First Month's Loan Payment	First Year Premium	Insurance Type:
$	$	
$	$	
$	$	

_____

Co-Borrower's Signature Date

The first year's premiums are based on an assumption that monthly loan payments are timely made. All unpaid premiums are due at the time of the final payment. The insurance may be canceled if I do not pay the premiums.** I may cancel any of the optional insurance products offered at any time. The optional insurance will be canceled upon the earliest of the following occurrences:

(1) your receipt of my written request for cancellation;
(2) cancellation under the insurance certificate or policy;
(3) payment in full of my loan; or
(4) my death.

**Optional language: The insurance will cancel on the date when the total past due premiums equal or exceed (insert number) times the first month's premium.

MAILING OF NOTICES TO BORROWER

You or I may mail or deliver any notice to the address above. You or I may change the notice address by giving written notice. Your duty to give me notice will be satisfied when you mail it.

STATEMENT OF TRUTHFUL INFORMATION

I promise that all information I gave you is true.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without your prior written consent, you may require immediate payment in full of all that I owe under this Loan Agreement. You will not exercise this option if prohibited by law.

If you exercise this option, you will give me notice that you are demanding payment of all that I owe. This notice will give me a period of not less than 21 days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, you may use any remedy allowed by the Loan Agreement.

NO WAIVER OF LENDER'S RIGHTS

If you don't enforce your rights every time, you can still enforce them later.

COLLECTION EXPENSES

If you require me to pay all that I owe at once, you will have the right to be paid back by me for all of your costs and expenses in enforcing this Loan Agreement to the extent not prohibited by Applicable Law. These expenses include, for example, reasonable attorneys' fees.

JOINT LIABILITY

I understand that you may seek payment from only me without first looking to any other Borrower.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

SAVINGS CLAUSE

If any part of this Loan Agreement is declared invalid, the rest of the Loan Agreement remains valid. If any part of this Loan Agreement conflicts with any law, that law will control. The part of the Loan Agreement that conflicts with any [~~the~~] law will be modified to comply with the law. The rest of the Loan Agreement remains valid.

PRIOR AGREEMENTS

This written Loan Agreement is the final agreement between you and me. It may not be changed by prior, current, or future oral agreements between you and me. There are no oral agreements between you and me relating to this Loan Agreement. Any change to this Loan Agreement must be in writing. Both you and I have to sign written agreements.

THIS NOTE SECURED BY A DEED OF TRUST

In addition to this Note, the Deed of Trust protects the Note holder from losses that might result if I do not keep the promises that I make in this Note. The Deed of Trust describes how and under what conditions I may have to make immediate payment of all that I owe under this Note.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

COMPLAINTS AND INQUIRIES NOTICE

The (name of lender or note holder) is licensed and examined under the laws of the State of Texas and by state law is subject to regulatory oversight by the Office of Consumer Credit Commissioner. Any consumer wishing to file a complaint against the (name of lender or note holder) should contact the Office of Consumer Credit Commissioner through one of the means indicated below:

Office of Consumer Credit Commissioner
2601 North Lamar Boulevard, Austin, Texas 78705-4207
www.occc.state.tx.us
(800) 538-1579

COLLATERAL

The Property is subject to the Contract lien.

I am responsible for all obligations in this Note.

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

Do not sign if there are blanks left to be completed in this document.

I must receive a copy of this document after I have signed it. I agree to the terms of this Loan Agreement.

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

(Sign Original Only)

(Option for witness signatures)

Figure: 7 TAC §90.604(a)(16)

TEXAS HOME IMPROVEMENT
DEED OF TRUST
ASSIGNMENT OF CONTRACTOR'S LIEN
(Second Lien)

~~[NOTICE OF CONFIDENTIALITY RIGHTS: I MAY REMOVE OR STRIKE MY SOCIAL SECURITY NUMBER OR MY DRIVER'S LICENSE NUMBER FROM THIS DOCUMENT BEFORE IT IS FILED IN THE PUBLIC RECORDS.~~]

DEFINITIONS

(A) "Borrower" is _____. Borrower's address is _____.

(B) "Contractor" is _____. Contractor's address is _____.

(C) "Lender" is _____. Lender's address is _____.

(D) "Trustee" is _____. Trustee's address is _____.

(E) "I" or "me" means _____, the grantor under this Deed of Trust and the person who signed the Note ("Borrower").

(F) "Loan Agreement" means the Contract, Note, Security Document, Deed of Trust, any other related document, or any combination of those documents, under which Lender has made a loan to me.

(G) "Deed of Trust" means this document, which is dated _____, together with all riders to this document.

(H) "Note" means the Texas Home Improvement Mechanic's Lien Note signed by me and dated _____ and includes all amounts secured by this Contract. The Note states that the amount I owe Lender is _____ dollars (U.S. $_____) plus interest.

(I) "Property" means the property at (list address of the Property), whose legal description is (list legal description of the Property).

(J) "Applicable Law" means all controlling applicable federal, state, and local law.

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on me or the Property by a condominium association, homeowners association, or similar organization.

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. The term includes point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section ___ of this Deed of Trust.

(N) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than proceeds paid under my insurance) for: damage or destruction of the Property; condemnation or other taking of all or any part of the Property; conveyance instead of condemnation; or misrepresentations or omissions related to the value or condition of the Property.

(O) "Periodic Payment" means the regularly scheduled amount due for principal and interest under the Note plus any amounts under this Deed of Trust.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 *et seq.*) and Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Deed of Trust, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan Agreement does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest" means any party that has taken title to the Property.

(R) "Ground Rents" means amounts I owe if I rented the real property under the buildings covered by this Deed of Trust. Such an arrangement usually takes the form of a long-term "ground lease."

(S) "Contract" means the Texas Home Improvement Mechanic's Lien Contract for Improvement, Power of Sale, and Deed of Trust.

(T) "Lien" means the Mechanic's and Materialman's Lien on the Property that results from the Contract and the Work performed. The Lien includes all existing and future improvements, easements, and rights in the Property.

TRANSFER OF RIGHTS IN THE PROPERTY

I give the Property to Trustee to ensure Lender is repaid the debt evidenced by my Note dated _____ and any renewal or extension, to ensure Lender is repaid any sums (with interest) Lender advances to protect the security of this Deed of Trust, and to guarantee my promises. I give to the Trustee, in trust, with power of sale, the Property located in _____ County at *(Street Address) (City) (State) (Zip Code)* and further described as:

(Legal Description)

The security interest in the Property includes existing and future improvements, easements, fixtures, attachments, replacements and additions to the Property, insurance refunds, and proceeds.

I promise that I own the Property and have the right to grant Lender an interest in it. I also promise that the Property is free of any lien, except liens that are publicly recorded. I promise that I will generally defend the title to the Property. I will be responsible for Lender's losses that result from a conflicting ownership right in the Property. Any default under my agreements with Lender will be a default of this Deed of Trust.

LENDER AND I PROMISE:

PAYMENT OF LATE CHARGES AND PREPAYMENT

I will timely pay the principal, interest, and any other amounts due under the Loan Agreement. I will comply with the requirements of my escrow account under the Loan Agreement. I will make payments in U.S. currency. If any check is returned to Lender unpaid, Lender may select the form of future payments including:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

I will make payments to the location as Lender directs. Lender will apply my payments against the Loan Agreement only when they are received at the designated location. Lender may change the location for payments if Lender gives me notice.

Lender may return any partial payment that does not bring the account current. Lender may accept any payment or partial payment that does not bring the account current without losing Lender's rights to refuse full or partial payments in the future. I will not use any offset or claim against Lender to relieve me from my duty to make payments under the Loan Agreement.

FUNDS FOR ESCROW ITEMS

I will pay Lender an amount ("Funds") for:

a. taxes and assessments and other items that can take priority over Lender's security interest in the Property under the Loan Agreement;
b. leasehold payments or Ground Rents on the Property, if any; and
c. premiums for any insurance Lender requires under the Loan Agreement.

These items are called "Escrow Items." At any time during the term of the Loan Agreement, Lender may require me to pay Community Association Dues, Fees, and Assessments, if any, as an Escrow Item.

I will promptly give Lender all notices of amounts to be paid. I will pay Lender the Funds for Escrow Items unless Lender, at any time, waives my duty to pay Lender. Any escrow waiver must be in writing. If Lender waives my duty to pay Lender the Funds, I will pay, at Lender's direction, the amounts due for waived Escrow Items. If Lender requires, I will give Lender receipts showing timely payment. My duty to make Escrow Item payments and to provide receipts is an independent promise in the Loan Agreement.

If Lender grants me an escrow waiver, Lender may require me to pay the waived Escrow Items. If I fail to directly pay the waived Escrow Items, Lender may use any right given to Lender in the Loan Agreement. Lender may pay waived Escrow Items and require me to repay Lender. Lender may cancel the waiver for Escrow Items at any time by a notice that complies with the Loan Agreement. If Lender cancels the waiver, I will pay Lender all Funds that are then required under this Section.

At any time Lender may collect and hold Funds in an amount:

a. to permit Lender to apply the Funds at the time specified under RESPA; and
b. not to exceed the maximum amount Lender may require under RESPA.

Lender will estimate the amount of Funds due on the basis of current data and reasonable estimates of future expenses for Escrow Items or otherwise, according to Applicable Law. The Funds will be held in an institution whose deposits are federally insured (including Lender, if Lender's deposits are insured) or in any Federal Home Loan Bank.

Lender will timely pay Escrow Items as required by RESPA. Lender will not charge me a fee for maintaining or handling my escrow account. Lender is not required to pay me any interest on the amounts in my escrow account. Lender will give me an annual accounting of the Funds as required by RESPA. If

there is a surplus in my escrow account, Lender will follow RESPA. If there is a shortage or deficiency, as defined by RESPA, Lender will notify me, and I will pay Lender the amount necessary to make up the shortage or deficiency. I will repay the shortage or deficiency in no more than twelve monthly payments. Lender will promptly return to me any Funds after I have paid the Loan Agreement in full.

CHARGES AND LIENS

I will timely pay all taxes, assessments, charges, and fines relating to the Property that can take priority over this Deed of Trust. I also will timely pay leasehold payments or Ground Rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. If these items are Escrow Items, I will pay them as required by the Loan Agreement. I will promptly satisfy any lien that has priority over this Deed of Trust unless I:

a. agree in writing to pay the amount secured by the lien in a manner acceptable to Lender and only so long as I comply with my agreement;
b. contest the lien in good faith by stopping the enforcement of the lien through legal proceedings (this contest must be satisfactory to Lender); or
c. obtain an agreement from the holder of the lien that is satisfactory to Lender.

If Lender determines that any part of the Property is subject to a lien that can take priority over this Deed of Trust, Lender may give me a notice identifying the lien. I will satisfy the lien or take one or more of the actions described above in this Section within 10 days of the date of the notice.

PROPERTY INSURANCE

I WILL INSURE THE CURRENT AND FUTURE IMPROVEMENTS TO THE PROPERTY AGAINST LOSS BY FIRE, HAZARDS INCLUDED WITHIN THE TERM "EXTENDED COVERAGE," AND ANY OTHER HAZARDS INCLUDING EARTHQUAKES AND FLOODS, AS LENDER MAY REQUIRE. I WILL KEEP THIS INSURANCE IN THE AMOUNTS (INCLUDING DEDUCTIBLE LEVELS) AND FOR THE PERIODS THAT LENDER REQUIRES. LENDER MAY CHANGE THESE INSURANCE REQUIREMENTS DURING THE TERM OF THE LOAN AGREEMENT. I HAVE THE RIGHT TO CHOOSE AN INSURANCE CARRIER THAT IS ACCEPTABLE TO LENDER. LENDER WILL EXERCISE LENDER'S RIGHT TO DISAPPROVE REASONABLY. I MAY PROVIDE ANY INSURANCE REQUIRED BY THIS DEED OF TRUST EITHER THROUGH EXISTING POLICIES OWNED OR CONTROLLED BY ME OR THROUGH EQUIVALENT COVERAGE FROM ANY INSURANCE COMPANY AUTHORIZED TO TRANSACT BUSINESS IN TEXAS.

I will pay any fee charged by the Federal Emergency Management Agency for the review of any flood zone determination. Lender may require me to pay either:

a. a one-time charge for flood zone determination, certification and tracking services; or
b. a one-time charge for flood zone determination and certification services; and subsequent charges each time re-mappings or similar changes occur that reasonably might affect the determination or certification.

If I do not keep any required insurance, Lender may obtain insurance at Lender's option and at my expense. Lender is not required to purchase any type or amount of insurance. Any insurance Lender buys will always protect Lender, but may not protect me, my equity in the Property, my contents in the Property or protect me from certain hazards or liability. I understand that this insurance may cost significantly more than insurance I can purchase. I will owe Lender for the cost of any insurance that Lender buys under this Section. Interest will be charged on this amount at the interest rate used by the Note. The interest will be charged from the date Lender made the payment. Lender will give me notice of the amounts I owe under this Section.

Lender may disapprove any insurance policy or renewal. Any insurance policy must include a standard mortgage clause, and must name Lender as mortgagee or a loss payee. I will give Lender all insurance premium receipts and renewal notices, if Lender requests. If I obtain any optional insurance to cover damage or destruction of the Property, I will name Lender as a loss payee. In the event of loss, I will give notice to Lender and the insurance company. Lender may file a claim if I do not file one promptly. Lender will apply insurance proceeds to repair or restore the Property unless Lender's interest will be reduced or it will be economically unreasonable to perform the Work. Lender may hold the insurance proceeds until Lender has had an opportunity to inspect the Work and Lender considers the Work to be acceptable. The insurance proceeds may be given in a single payment or multiple payments as the Work is completed. Lender will not pay any interest on the insurance proceeds. If I hire a public adjuster or other third party, I am responsible for the fee. It will not be paid from the insurance proceeds. The insurance proceeds will be applied to the amount I owe if Lender's interest will be reduced or if the Work will be economically unreasonable to perform. Lender will pay me any excess insurance proceeds. Lender will apply insurance proceeds in the order provided by the Loan Agreement.

If I abandon the Property Lender may file, negotiate, and settle any insurance claim. If the insurance company offers to settle a claim and I do not respond within thirty days to a notice from Lender, then Lender may settle the claim. The 30-day period will begin when the notice is given. If I abandon the Property, fail to respond to the offer of settlement, or Lender forecloses on the Property, I assign to Lender:

a. my rights to any insurance proceeds in an amount not greater than what I owe; and
b. any of my other rights under insurance policies covering the Property.

Lender may apply the proceeds to repair or restore the Property or to the amount that I owe.

PRESERVATION, MAINTENANCE, PROTECTION, AND INSPECTION OF THE PROPERTY

I will not destroy, damage, or impair the Property, allow it to deteriorate, or commit waste. Whether or not I live in the Property, I will maintain it in order to prevent it from deteriorating or decreasing in value due to its condition. I will promptly repair the damage to the Property to avoid further deterioration or damage unless Lender and I agree in writing that it is economically unreasonable. I will be responsible for repairing or restoring the Property only if Lender releases the insurance or condemnation proceeds for the damage to or the taking of the Property. Lender may release proceeds for the repairs and restoration in a single payment or in a series of payments as the Work is completed. I still am obligated to complete repairs or restoration of the Property even if there are not enough proceeds to complete the Work. If this Deed of Trust secures a unit in a condominium or planned unit development, I will perform all of my obligations under the declaration or covenants creating or governing the condominium or planned unit development, and any other relevant document.

Lender or Lender's agent may inspect the Property. Lender may inspect the interior of the Property with reasonable cause. Lender will give me notice stating reasonable cause when or before the interior inspection occurs.

PROTECTION OF LENDER'S INTEREST IN THE PROPERTY AND RIGHTS UNDER THE DEED OF TRUST

Lender may do whatever is reasonable to protect Lender's interest in the Property, including protecting or assessing the value of the Property, and securing or repairing the Property. Lender may do this when:

a. I fail to perform the promises and agreements contained in the Loan Agreement;
b. a legal proceeding might significantly affect Lender's interest in the Property or rights under the Loan Agreement (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may have priority over the Loan Agreement or to enforce laws or regulations); or
c. I abandon the Property.

In order to protect Lender's interest in the Property, Lender may:

a. pay amounts that are secured by a lien on the Property which has or will have priority over the Loan Agreement;
b. appear in court; or
c. pay reasonable attorneys' fees.

Lender may enter the Property to secure it. To secure the Property, Lender may make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Lender has no duty to secure the Property. Lender is not liable for failing to take any action listed in this Section. Any amounts Lender pays under this Section will become my additional debt secured by the Loan Agreement. These amounts will earn interest at the rate specified in the Loan Agreement. The interest will begin on the date the amounts are paid. Lender will give me notice requesting payment of these amounts. If the Loan Agreement is on a leasehold, I will comply with the lease.

ASSIGNMENT OF MISCELLANEOUS PROCEEDS AND FORFEITURE

Any Miscellaneous Proceeds will be assigned and paid to Lender. If the Property is damaged, Miscellaneous Proceeds will be applied to restore or repair the Property. Lender will only do this if Lender's interest in the Property will not be reduced and if the work will be economically reasonable to perform. Lender will have the right to hold Miscellaneous Proceeds until Lender inspects the Property to ensure the work has been completed to Lender's satisfaction. Lender must make the inspection promptly. Lender may release proceeds for the work in a single payment or in multiple payments as the work is completed. Lender is not required to pay me any interest on the Miscellaneous Proceeds. The Miscellaneous Proceeds will be applied to the amount I owe if Lender's interest in the Property will be reduced or the work will be economically unreasonable to perform. Lender will pay me any excess Miscellaneous Proceeds. Lender will apply Miscellaneous Proceeds in the order provided by the Loan Agreement.

Lender will apply all Miscellaneous Proceeds to the amount I owe in the event of a total taking, destruction, or loss in value of the Property. Lender will apply the Miscellaneous Proceeds even if all payments are current. Lender will give any excess Miscellaneous Proceeds to me.

A partial loss can include a taking, destruction, or loss in value. In the event of a partial loss, the Miscellaneous Proceeds will be applied in one of two ways:

a. If the fair market value of the Property immediately before the partial loss is less than the amount I owe immediately before the partial loss, then Lender will apply all Miscellaneous Proceeds to the amount I owe even if all payments are current.
b. If the fair market value of the Property immediately before the partial loss is equal to or greater than the amount I owe immediately before the partial loss, then Lender will apply Miscellaneous Proceeds to the amount I owe in the following manner:

    1. The amount of Miscellaneous Proceeds multiplied by the result of,
    2. The amount I owe immediately before the partial loss divided by the fair market value of the Property immediately before the partial loss.

Lender and I can agree otherwise in writing. Lender will give any excess Miscellaneous Proceeds to me.

If I abandon the Property, Lender may apply Miscellaneous Proceeds either to restore or repair the Property, or to the amount I owe.

Damage to the Property caused by a third party may result in a civil proceeding. If Lender gives me notice that the third party offers to settle a claim for damages to the Property and I fail to respond to Lender within thirty days, Lender may accept the offer and apply the Miscellaneous Proceeds either to restore or repair the Property or to the amount I owe. If the proceeding results in an award of damages, Lender will apply the Miscellaneous Proceeds according to this Section.

FORBEARANCE NOT A WAIVER

If Lender doesn't enforce Lender's rights every time, Lender can still enforce them later.

JOINT AND SEVERAL LIABILITY, DEED OF TRUST EXECUTION, SUCCESSORS OBLIGATED

I understand that Lender may seek payment from only me without first looking to any other Borrower.

Any person who signs this Deed of Trust, but not the Note:

a. will not have to repay the Note;
b. is not a surety or guarantor; and,

c. only gives a security interest in the Property under this Deed of Trust.

The Lien against the Property is voluntary. Each owner and each owner's spouse consent to the Lien. Lender and I may modify the Loan Agreement in writing. Lender must approve my successor in writing. My successor will receive all of my rights and benefits under the Loan Agreement. I still will be responsible under the Loan Agreement unless Lender releases me in writing. The Loan Agreement will extend to Lender's assigns or successors.

USURY SAVINGS CLAUSE

I do not have to pay interest or other amounts that are more than Applicable Law allows.

MAILING OF NOTICES TO BORROWER

Lender or I may mail or deliver any notice to the address above. Lender or I may change the notice address by giving written notice. Lender's duty to give me notice will be satisfied when Lender mails it.

APPLICATION OF LAW

Federal law and Texas law apply to this Loan Agreement.

RULES OF CONSTRUCTION

As used in the Loan Agreement:

a. words in the singular will mean and include the plural and vice versa; and
b. the word "may" gives discretion without imposing any duty to take action.

LOAN AGREEMENT COPIES

At the time the Loan Agreement is made, Lender will give me copies of all documents I sign.

DUE ON SALE CLAUSE, NOTICE OF INTENT TO ACCELERATE, AND NOTICE OF ACCELERATION

If all or any interest in the Property is sold or transferred without Lender's prior written consent, Lender may require immediate payment in full of all that I owe under this Loan Agreement. Lender will not exercise this option if Applicable Law prohibits.

If Lender exercises this option, Lender will give me notice that Lender is demanding payment of all that I owe. This notice will give me a period of not less than 21 [~~one~~] days from the date of the notice within which I must pay all that I owe under this Loan Agreement. If I fail to pay all that I owe before the end of this period, Lender may use any remedy allowed by the Loan Agreement.

LENDER, CONTRACTOR, AND I PROMISE AND AGREE:

ACCELERATION AND REMEDIES

Lender will give me notice prior to acceleration if I am in default under the Loan Agreement. The notice will specify:

a. the default;
b. the action required to cure the default;
c. a date, not less than 21 days from the date Lender gives me notice, to cure the default; and
d. that my failure to cure the default on or before the specified date will result in acceleration of all that I owe under the Loan Agreement and sale of the Property.

Lender will inform me of my right to reinstate after acceleration. If the default is not cured before the specified date, Lender has the option to require immediate payment in full of all I owe. If Lender is not paid all I owe, Lender may sell the Property or seek other remedies allowed by Applicable Law without further notice. Lender may collect Lender's reasonable expenses incurred in seeking the remedies provided in this Section. These expenses may include court costs, attorneys' fees, and costs of title search.

I understand the power of sale is not a confession of judgment or a power of attorney to confess judgment or an appearance by me in a judicial proceeding. If the Property is sold under this Section I or my successors will immediately give possession of the Property to the purchaser. If I do not, I or anyone residing on the Property may be removed by writ of possession.

POWER OF SALE

Lender has a fully enforceable lien on the Property. Lender's remedies for my default include an efficient means of foreclosure under the law. Lender and the Trustee have all powers to conduct a foreclosure. If Lender chooses to use the power of sale, Lender will give me notice of the time, place and terms of the sale by posting and filing notice at least 21 days before the sale as provided by law. Lender will give me notice by mail as required by law. Failure to cure default on or before the date in the notice may result in acceleration of the amount that I owe under this Loan Agreement. The notice will inform me of my right to reinstate after acceleration and assert in court that I am not in default or any other defense to acceleration or sale. If I do not cure the default on or

before the date in the notice, Lender, at Lender's option, may declare all that I owe under this Loan Agreement to be immediately due and payable and may invoke the power of sale and any other remedies permitted by Applicable Law. The sale will be conducted at a public place. The sale will be held:

a. on the first Tuesday of a month;
b. at a time stated in the notice or no later than 3 hours after the time; and
c. between 10:00 a.m. and 4:00 p.m.

I allow the Trustee to sell the Property to the highest bidder for cash in one or more pieces and in any order the Trustee determines. Lender may purchase the Property at any sale.

Trustee will give a Trustee's deed to the foreclosure sale purchaser. A Trustee's deed will convey:

a. good title to the Property; and
b. title with promises of general warranty from me.

I will defend the purchaser's title to the Property against all claims and demands. The description of facts contained in the Trustee's deed will be sufficient to legally prove the truth of the statements made in the deed. Trustee will apply the proceeds of the sale in the following order:

a. to all expenses of the sale, including court costs and reasonable Trustee's and attorneys' fees;
b. what I owe; and
c. any excess to the person or persons legally entitled to it.

If the Property is sold through a foreclosure sale governed by this Section, I or any person in possession of the Property through me, will give up possession of the Property without delay. A person who does not give up possession is a holdover and may be removed by a court order.

BORROWER'S RIGHT TO REINSTATE AFTER ACCELERATION

I have the right to stop Lender from enforcing the Loan Agreement any time before the earliest of:

a. 5 days before sale of the Property under any power of sale included in the Loan Agreement;
b. the day required by Applicable Law for the termination of my right to reinstate; or
c. the entry of a judgment enforcing the Loan Agreement.

I can stop the enforcement of the Loan Agreement and reinstate the Loan Agreement if all the following conditions are met:

a. Lender is paid what I owe under the Loan Agreement as if no acceleration had occurred;
b. I cure any default of any promise or agreement;
c. Lender is paid all expenses allowed by Applicable Law, including reasonable attorneys' fees and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under the Loan Agreement;
d. I comply with any reasonable requirement to assure Lender that Lender's interest in the Property will remain intact; and
e. I comply with any reasonable requirement to assure Lender that my ability to pay what I owe will remain intact.

Lender may require me to pay for the reinstatement in one or more of the following forms:

a. cash;
b. money order;
c. certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are federally insured; or
d. Electronic Funds Transfer.

Upon reinstatement, the Loan Agreement will remain effective as if no acceleration had occurred. However, this right to reinstate will not apply if I sell or transfer any interest in the Property without Lender's permission.

ASSIGNMENT OF RENTS, APPOINTMENT OF RECEIVER, LENDER IN POSSESSION

As additional security, I assign to you the rents of the Property, provided that you have the right, prior to acceleration or abandonment of the Property, to collect and retain the rents as they become due. Upon acceleration or abandonment, you, by agent or by court-appointed receiver, will be entitled to enter, take possession, manage the Property, and collect due and past due rents. All rents you or the court-appointed receiver collect will be applied first to payment of the cost of management of the Property and collection of rents, including receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the sums secured by this Deed of Trust. You and the receiver will be liable to account only for rents received.

RELEASE

Lender will cancel and return the Note to me and give me, in recordable form, a release of lien securing the Loan Agreement or a copy of any endorsement of the Note and assignment of the Lien to a Lender that is refinancing the Loan Agreement. I will pay only the cost of recording the release of lien.

TRUSTEES AND TRUSTEE LIABILITY

One or more Trustees acting alone or together may exercise or perform all rights, remedies and duties of the Trustee under the Loan Agreement. Lender may remove or change any Trustee (e.g., add one or more Trustees or appoint a successor Trustee to any Trustee). This removal or change of Trustee must be in writing and may be:

a. at Lender's option;
b. with or without cause; and
c. by power of attorney or otherwise.

The substitute, additional, or successor Trustee will receive the title, rights, remedies, powers, and duties under the Loan Agreement and Applicable Law.

Trustee may rely upon any notice, request, consent, demand, statement, or other document reasonably believed by Trustee to be valid. Trustee will not be liable for any act or omission unless the act or omission is willful.

ASSIGNMENT OF CONTRACTOR'S LIEN, COMMENCEMENT OF WORK

Contractor and I have entered into the Contract for improvements to be made to the Property. I will perform my duties under the Contract. Under the Contract, I gave Contractor a Lien on the Property. Contractor permanently transfers the Lien and any other interest Contractor has in the Property to Lender. As additional security, Contractor also agrees that the lien created by this Deed of Trust has priority over the Lien. The purpose of the Note is to pay in whole or in part the improvements to be made to the Property by the Contractor. Contractor and I agree that the Lien is for Lender's sole benefit. Any other interest Contractor has in the Property will be merged with the Lien, and may be enforced by Lender according to the terms of this Deed of Trust. Contractor and I further agree that no Work was performed or material delivered before the Contract was executed.

SUBROGATION

If I ask, Lender will use proceeds from the Loan Agreement to pay off all valid outstanding liens against the Property. Lender will then own all rights, superior titles, liens, and interests owned or claimed by any owner or holder of an outstanding lien or debt. Lender owns these things whether the lien or debt is transferred to Lender or whether it is released by the holder upon payment.

PARTIAL INVALIDITY

If any portion of the sums secured by this Deed of Trust cannot be lawfully secured, payments minus those sums will be applied first to the portions not secured. If any charge provided for in this Loan Agreement, separately or together with other charges that are considered part of this Loan Agreement, violates Applicable Law, the charge is reduced to the extent necessary to eliminate the violation. Lender will refund the amount of interest or other charges paid to Lender in excess of the amount permitted by Applicable Law. At Lender's option, the amount in excess will either be refunded directly to me or will be applied to reduce the principal of the debt.

RENEWAL AND EXTENSION

The Note secured by this Deed of Trust is renewed and extended, but not in extinguishment of the debt under the Contract identified in the paragraph entitled "Assignment of Contractor's Lien, Commencement of Work" and the Note.

SALE OF NOTE, CHANGE OF LOAN SERVICER, NOTICE OF GRIEVANCE, LENDER'S RIGHT TO COMPLY

A full or partial interest in the Loan Agreement can be sold one or more times without prior notice to me. The sale may result in a change of the company servicing or handling the Loan Agreement. The company servicing or handling the Loan Agreement will collect my monthly payment and will comply with other servicing conditions required by the Loan Agreement or Applicable Law. In some cases, the company servicing or handling the Loan Agreement may change even if the Loan Agreement is not sold. If the company servicing or handling the Loan Agreement is changed, I will be given written notice of the change. The notice will state the name and address of the new company, the address to which my payments should be made, and any other information required by RESPA.

Any notice of acceleration and opportunity to cure under the Loan Agreement will satisfy the notice and opportunity to address the alleged violation provisions of this Section.

No agreement between Lender and me or any third party will limit Lender's ability to comply with Lender's duties under the Loan Agreement and Applicable Law.

Lender and I are limiting all agreements so that all current or future interest or fees in connection with this Loan Agreement will not be greater than the highest amount allowed by Applicable Law.

Lender and I intend to conform the Loan Agreement to the provisions of Applicable Law. If any part of the Loan Agreement is in conflict with the Applicable Law, then that part will be corrected or removed. This correction will be automatic and will not require any amendment or new document. Lender's right to cure any violation will survive my paying off the Loan Agreement. My right to cure will override any conflicting provision of the Loan Agreement.

Lender's right to comply as provided in this Section will survive the payoff of the Loan Agreement. The provisions of this Section will supersede any inconsistent provision of the Loan Agreement.

HAZARDOUS SUBSTANCES

Hazardous Substances:

a. "Hazardous Substances" means those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials;
b. "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection;
c. "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and
d. "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

I will not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. I will not do, or allow anyone else to do, anything affecting the Property:

a. that is in violation of any Environmental Law;
b. that creates an Environmental Condition; or
c. that, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property.

The presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and for the maintenance of the Property are allowed. This includes Hazardous Substances found in consumer products.

I will promptly give Lender written notice of:

a. any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which I have actual knowledge;
b. any Environmental Condition, including any spilling, leaking, discharge, release or threat of release of any Hazardous Substance; and
c. any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property.

If I learn that, or am notified by any governmental or regulatory authority, or any private party that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, I promptly will take all necessary remedial actions in accordance with Environmental Law. Lender will have no obligation for an Environmental Cleanup.

LENDER'S RIGHTS AND BORROWER'S RESPONSIBILITIES

Lender is entitled to all rights, superior title, liens, and equities owned or claimed by any grantor or holder of any liens and debts due before the signing of the Loan Agreement. Lender may acquire these rights by assignment or the holder may release them upon payment.

Each person who signs the Deed of Trust is responsible for each promise and duty in the Deed of Trust.

Unless prohibited by Applicable Law, this Section will not:

a. impair in any way the Loan Agreement or Lender's right to collect all that I owe under the Loan Agreement;
b. affect Lender's right to any promise or condition of the Loan Agreement.

DEFAULT

Any default of my agreements with Lender will be a default of this Deed of Trust.

REQUEST FOR NOTICE OF DEFAULT
----------AND FORECLOSURE UNDER SUPERIOR----------
MORTGAGES OR DEEDS OF TRUST

Lender and I request that the holder of any mortgage, deed of trust or other claim with a lien that has priority over this Deed of Trust give Lender notice, at Lender's address listed on this Deed of Trust, of any default under the superior claim and of any sale or other foreclosure action.

BY SIGNING BELOW, I accept and agree to the terms and promises contained in the Loan Agreement and in any rider I sign which is recorded with it. (DO NOT SIGN IF THERE ARE BLANKS LEFT TO BE COMPLETED IN THIS DOCUMENT. I MUST RECEIVE A COPY OF ANY DOCUMENT I SIGN.)

IN WITNESS WHEREOF, Borrower and Contractor have executed this Deed of Trust and Assignment of Contractor's Lien.

-Contractor

By:_____

_____

Printed Name:_____
(Please Complete)

_____

Printed Name:_____
(Please Complete)

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

_____(Seal)
-Borrower

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by __(name of owner)_____.

_____
Notary Public

(Seal)

STATE OF TEXAS
COUNTY OF _____

Sworn to and subscribed before me on the _____ day of _____, 20 _____ by ___(name of contractor)_____.

_____
Notary Public

(Seal)

Figure: 16 TAC §401.307(g)(5)

Prize Chart
Exact Order Play

Pick 3 Base Play Amount	Prize
$.50	$250
$1	$500
$2	$1,000
$3	$1,500
$4	$2,000
$5	$2,500

Figure: 16 TAC §401.307(g)(6)

Prize Chart
3-Way Any Order Play

Pick 3 Base Play Amount	Prize
$.50	$80
$1	$160
$2	$320
$3	$480
$4	$640
$5	$800

Figure: 16 TAC §401.307(g)(7)

Prize Chart
6-Way Any Order Play

Pick 3 Base Play Amount	Prize
$.50	$40
$1	$80
$2	$160
$3	$240
$4	$320
$5	$400

Figure: 16 TAC §401.307(g)(8)

Prize Chart
3-Way Exact Order/Any Order Play

Pick 3 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$330	$80
$1	$660	$160
$2	$1,320	$320
$3	$1,980	$480
$4	$2,640	$640
$5	$3,300	$800

Figure: 16 TAC §401.307(g)(9)

Prize Chart
6-Way Exact Order/Any Order Play

Pick 3 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$290	$40
$1	$580	$80
$2	$1,160	$160
$3	$1,740	$240
$4	$2,320	$320
$5	$2,900	$400

Figure: 16 TAC §401.307(g)(10)

Prize Chart
Combo Play

Pick 3 Base Play Amount	Prize
$.50	$250
$1	$500
$2	$1,000
$3	$1,500
$4	$2,000
$5	$2,500

Figure: 16 TAC §401.307(g)(11)

Prize Chart
Pick 3 Lucky Sum

Number Picked	Base Play Amount = $ .50	Base Play Amount = $1	Base Play Amount = $2	Base Play Amount = $3	Base Play Amount = $4	Base Play Amount = $5
0, 27	$250	$500	$1,000	$1,500	$2,000	$2,500
1, 26	$83	$166	$333	$500	$666	$833
2, 25	$41	$83	$166	$250	$333	$416
3, 24	$25	$50	$100	$150	$200	$250
4, 23	$16	$33	$66	$100	$133	$166
5, 22	$11	$23	$47	$71	$95	$119
6, 21	$8	$17	$35	$53	$71	$89
7, 20	$6	$13	$27	$41	$55	$69
8, 19	$5	$11	$22	$33	$44	$55
9, 18	$4	$9	$18	$27	$36	$45
10, 17	$3	$7	$15	$23	$31	$39
11, 16	$3	$7	$14	$21	$28	$36
12, 15	$3	$6	$13	$20	$27	$34
13, 14	$3	$6	$13	$20	$26	$33

Figure: 16 TAC §401.316(g)(5)

Prize Chart
Straight Play

Daily 4 Base Play Amount	Prize
$.50	$2,500
$1	$5,000
$2	$10,000
$3	$15,000
$4	$20,000
$5	$25,000

Figure: 16 TAC §401.316(g)(6)

Prize Chart
4-Way Box Play

Daily 4 Base Play Amount	Prize
$.50	$600
$1	$1,200
$2	$2,400
$3	$3,600
$4	$4,800
$5	$6,000

Figure: 16 TAC §401.316(g)(7)

Prize Chart
6-Way Box Play

Daily 4 Base Play Amount	Prize
$.50	$400
$1	$800
$2	$1,600
$3	$2,400
$4	$3,200
$5	$4,000

Figure: 16 TAC §401.316(g)(8)

Prize Chart
12-Way Box Play

Daily 4 Base Play Amount	Prize
$.50	$200
$1	$400
$2	$800
$3	$1,200
$4	$1,600
$5	$2,000

Figure: 16 TAC §401.316(g)(9)

Prize Chart
24-Way Box Play

Daily 4 Base Play Amount	Prize
$.50	$100
$1	$200
$2	$400
$3	$600
$4	$800
$5	$1,000

Figure: 16 TAC §401.316(g)(10)

Prize Chart
Straight/4-Way Box Play

Daily 4 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$3,100	$600
$1	$6,200	$1,200
$2	$12,400	$2,400
$3	$18,600	$3,600
$4	$24,800	$4,800
$5	$31,000	$6,000

Figure: 16 TAC §401.316(g)(11)

Prize Chart
Straight/6-Way Box Play

Daily 4 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$2,900	$400
$1	$5,800	$800
$2	$11,600	$1,600
$3	$17,400	$2,400
$4	$23,200	$3,200
$5	$29,000	$4,000

Figure: 16 TAC §401.316(g)(12)

Prize Chart
Straight/12-Way Box Play

Daily 4 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$2,700	$200
$1	$5,400	$400
$2	$10,800	$800
$3	$16,200	$1,200
$4	$21,600	$1,600
$5	$27,000	$2,000

Figure: 16 TAC §401.316(g)(13)

Prize Chart
Straight/24-Way Box Play

Daily 4 Base Play Amount	Exact Order Match	Match Not in Exact Order
$.50	$2,600	$100
$1	$5,200	$200
$2	$10,400	$400
$3	$15,600	$600
$4	$20,800	$800
$5	$26,000	$1,000

Figure: 16 TAC §401.316(g)(14)

Prize Chart
Combo Play

Daily 4 Base Play Amount	Prize
$.50	$2,500
$1	$5,000
$2	$10,000
$3	$15,000
$4	$20,000
$5	$25,000

Figure: 16 TAC §401.316(g)(15)

Prize Chart
Front-Pair, Mid Pair, and Back-Pair Play

Daily 4 Base Play Amount	Prize
$.50	$25
$1	$50
$2	$100
$3	$150
$4	$200
$5	$250

Figure: 16 TAC §401.316(g)(16)

Prize Chart
Daily Four Lucky Sum

Number Picked	Base Play Amount = $ .50	Base Play Amount = $1	Base Play Amount = $2	Base Play Amount = $3	Base Play Amount = $4	Base Play Amount = $5
0, 36	$2,500	$5,000	$10,000	$15,000	$20,000	$25,000
1, 35	$625	$1,250	$2,500	$3,750	$5,000	$6,250
2, 34	$250	$500	$1,000	$1,500	$2,000	$2,500
3, 33	$125	$250	$500	$750	$1,000	$1,250
4, 32	$71	$142	$285	$428	$571	$714
5, 31	$44	$89	$178	$267	$357	$446
6, 30	$29	$59	$119	$178	$238	$297
7, 29	$20	$41	$83	$125	$166	$208
8, 28	$15	$30	$60	$90	$121	$151
9, 27	$11	$22	$45	$68	$90	$113
10, 26	$8	$17	$35	$53	$70	$88
11, 25	$7	$14	$28	$43	$57	$71
12, 24	$6	$12	$24	$36	$48	$60
13, 23	$5	$10	$20	$31	$41	$52
14, 22	$4	$9	$18	$27	$37	$46
15, 21	$4	$8	$16	$25	$33	$42
16, 20	$3	$7	$15	$23	$31	$39
17, 19	$3	$7	$15	$22	$30	$37
18	$3	$7	$14	$22	$29	$37

Figure: 30 TAC §115.112(a)(1)

Table I(a)		
REQUIRED CONTROL FOR STORAGE TANKS FOR VOC OTHER THAN CRUDE OIL AND CONDENSATE		
True Vapor Pressure of Compound at Storage Conditions	**Nominal Storage Capacity**	**Emission Control Requirements**
< 1.5 psia* (10.3 kPa*)	Any	None
≥1.5 psia (10.3 kPa) and < 11 psia (75.8 kPa)	≤1,000 gal* (3,785 L*)	None
	> 1,000 gal (3,785 L) and ≤25,000 gal (94,635 L)	Submerged fill pipe or vapor recovery system
	> 25,000 gal (94,635 L) and ≤40,000 gal (151,416 L)	Internal or external floating roof (any type) or vapor recovery system
	> 40,000 gal (151,416 L)	Internal floating roof or External floating roof with primary seal (any type) and secondary seal or vapor recovery system
≥11 psia (75.8 kPa)	≤1,000 gal (3,785 L)	None
	> 1,000 gal (3,785 L) and ≤25,000 gal (94,635 L)	Submerged fill pipe or vapor recovery system
	> 25,000 gal (94,635 L)	Submerged fill pipe and vapor recovery system
*psia=pounds per square inch absolute, *kPa=kilo Pascals, *gal=gallon, *L=Liter		

Table II(a)

REQUIRED CONTROL DEVICES FOR STORAGE TANKS FOR CRUDE OIL AND CONDENSATE

True Vapor Pressure of Compound at Storage Conditions	Nominal Storage Capacity	Emission Control Requirements
< 1.5 psia* (10.3 kPa*)	Any	None
≥1.5 psia (10.3 kPa) and < 11 psia (75.8 kPa)	≤1,000 gal* (3,785 L*)	None
	> 1,000 gal (3,785 L) and ≤40,000 gal (151,416 L)	Submerged fill pipe or vapor recovery system
	> 40,000 gal (151,416 L)	Internal floating roof or External floating roof with primary seal (any type) and secondary seal or vapor recovery system
≥11 psia (75.8 kPa)	≤1,000 gal (3,785 L)	None
	> 1,000 gal (3,785 L) and ≤40,000 gal (151,416 L)	Submerged fill pipe or vapor recovery system
	> 40,000 gal (151,416 L)	Submerged fill pipe and vapor recovery system

*psia=Pounds per square inch absolute, *kPa=kilo Pascals, *gal=Gallon, *L=Liter

Figure 1: 30 TAC Chapter 117--Preamble

Proposed New Rules and Modifications to Chapter 117

The following is a list of the sections of 30 TAC Chapter 117 with proposed new rules and modifications. Other portions of Chapter 117 included with this rulemaking are existing language proposed for reformatting purposes only.

New/Modified Chapter 117 Sections for DFW Eight-Hour Ozone SIP Rulemaking

SUBCHAPTER A: DEFINITIONS	§117.10(2), (14), (24), (29), (44), and (51)
SUBCHAPTER B: COMBUSTION CONTROL AT MAJOR INDUSTRIAL, COMMERCIAL, AND INSTITUTIONAL SOURCES IN OZONE NONATTAINMENT AREAS	
Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Major Sources	§§117.400 - 117.456
- Exemption from Subchapter B, Division 2 after compliance date for Division 4	§117.200(b)
SUBCHAPTER C: COMBUSTION CONTROL AT MAJOR UTILITY ELECTRIC GENERATION SOURCES IN OZONE NONATTAINMENT AREAS	
Division 4: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Utility Electric Generation Sources	§§117.1300 - 117.1356
- Exemption from Subchapter C, Division 2 after compliance date for Division 4	§117.1100(c)
SUBCHAPTER D: COMBUSTION CONTROL AT MINOR SOURCES IN OZONE NONATTAINMENT AREAS	
Division 2: Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Minor Sources	§§117.2100 - 117.2145
SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL	
Division 2: Cement Kilns	§§117.3103, 117.3123, 117.3125, 117.3142, and 117.3145
Division 4: East Texas Combustion	§§117.3300 - 117.3345
SUBCHAPTER H: ADMINISTRATIVE PROVISIONS	
Division 1: Compliance Schedules	§§117.9030, 117.9130, 117.9210, 117.9320, and 117.9340

Implementation of HB 965 - Repeal of 10 ng/J standard on Type 0 (residential) water heaters.

SUBCHAPTER E: MULTI-REGION COMBUSTION CONTROL	
Division 3: Water Heaters, Small Boilers, and Process Heaters	§117.3205

Minor Changes to Existing 30 TAC Chapter 117 Language

• Add equation for oxygen correction of pollutant concentration.	§117.10(35)
• Update utility boiler definition and utility electric generation rules applicability consistent with East and Central Texas utility rules.	§§117.10(52), 117.1000, 117.1100, and 117.1200
• Update emergency fuel oil exemptions to include only appropriate reliability councils.	§§117.1003(c), 117.1103(c), and 117.1203(c)
• Include list of ammonia methods in test method procedures.	§117.8000(c)
• Allow major sources to petition ED for shorter test times.	§117.8000(b)
• Change references of "upsets" to "emissions events."	§§117.123(k), 117.223(k), 117.323(k), 117.1020(k), 117.1120(k), and 117.1220(k)
• Clarify system cap equations to allow for adjustment period after startup.	§117.320(c)
• Additional data substitution option for major sources subject to MECT.	§117.340(c)
• Expand engine low-use exemption from quarterly testing to BPA and DFW.	§117.8140(b)
• Update references to §101.222 to be consistent with current §101.222.	§§117.145(a), 117.245(a), 117.345(a), 117.1045(a), 117.1145(a), 117.1245(a), and 117.3045(a).
• Clarify compliance schedule for industrial EGFs to submit level of activity information.	§117.9020(2)(B)
• Allow Type 1 and 2 water heaters used exclusively for swimming pools and hot tubs at single family residences to qualify for exemption.	§117.3203(3)

Figure 2: 30 TAC Chapter 117--Preamble

Table 1

	5% IOP SIP April 27, 2005 TPD NO_X	TPD VOC
Adjusted Baseline Inventory	622.22	470.8
Percent Target Reduction	4.6	0.4
Target Reduction	28.62	1.88

Source of reductions	TPD NO_X	TPD VOC
Eligible existing measures		
Alcoa (within 200 km radius)	3.9	
TERP	22.2	
Energy efficiency	0.72	
Portable fuel containers (nine-county area)		2.79
Portable fuel containers (within 100 km radius)		0.63
Subtotal	26.82	3.42
Control measures requiring rulemaking		
Nine county lean-burn and rich-burn engine rule	1.87	
Expand surface coating rule to five counties		0.3
Lower Stage I exemption throughput to 10,000 gallons per month in five counties (same as in four core counties)		1.49
Subtotal	1.87	1.79
TOTAL IDENTIFIED REDUCTIONS	28.69	5.21
Minimum reductions required to meet 5%	28.69	1.86
SURPLUS REDUCTIONS	0.00	3.35

Figure: 30 TAC §117.10(35)

$$Cadj = Cmeas \times \frac{(20.9\% - \%O_2 rule)}{(20.9\% - \%O_2 meas)}$$

Where:

Cadj = pollutant concentration adjusted to percent O_2, dry basis, specified in applicable rule, in units of applicable standard (e.g., parts per million by volume);

Cmeas = pollutant concentration measured on a dry basis, in units of applicable standard;

20.9% = O_2 concentration in air, percent;

$\%O_2$ rule = O_2 basis for adjustment specified in applicable rule (e.g., 3.0% for boilers and process heaters) on a dry basis, percent; and

$\%O_2$ meas = O_2 concentration measured simultaneous with pollutant concentration, percent.

Figure: 30 TAC §117.105(b)(6)

$$EL_2 = \frac{(EL_1 \times 1.25 \times T_1) + (EL_1 \times T_2)}{T_1 + T_2}$$

Where:

EL_2 = time-weighted NO_X emission limitation for each 30-day period, in lb/MMBtu of heat input;

EL_1 = appropriate NO_X emission specification for gas-fired boilers from paragraph (1)(A) - (F) of this subsection or gas-fired process heaters from paragraph (2)(A) and (B) of this section, in lb/MMBtu of heat input;

1.25 = factor used as a multiplier times the appropriate emission limitation when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period;

T_1 = time in hours when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period during each 30-day period. The time period when hydrogen rich fuel is combusted must, at a minimum, be a consecutive eight-hour period to be used in the determination of T_1; and

T_2 = time in hours when firing gaseous fuel or hydrogen rich fuel (for less than eight consecutive hours) during each 30-day period.

Figure: 30 TAC §117.115(f)(4)

§117.115(f) OPT-IN UNITS

Equipment Class/Description	Emission Specification
fluid catalytic cracking unit carbon monoxide (CO) boilers	50% NO_X reduction across the inlet of the CO boiler to the outlet of the CO boiler, with the outlet concentration in ppmv converted into lb/MMBtu of heat input
lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower or greater	5.0 g/hp-hr of NO_X under all operating conditions
boilers or process heaters with a maximum rated capacity (MRC): 40 million British thermal units per hour (MMBtu/hr) ≤MRC< 100 MMBtu/hr	the emission specifications in §117.105(a) of this title for the applicable type of unit
stationary gas turbines with a megawatt (MW) rating: 1.0 MW ≤MW rating < 10.0 MW	42 ppmv NO_X at 15% O_2, dry basis
boilers and industrial furnaces that are regulated as existing facilities by 40 Code of Federal Regulations Part 266, Subpart H	the appropriate emission specification in §117.105(b) of this title

Figure: 30 TAC §117.115(g)(1)

$$EL_{PW} = MRC \times ES$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in lb/MMBtu; and

MRC = maximum rated capacity in million British thermal units per hour.

Figure: 30 TAC §117.115(g)(2)

$$EL_{PW} = \frac{MRC \times ES}{HR \times (454 \times 10^{6})}$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in grams per horsepower-hour;

MRC = engine manufacturer's rated heat input in million British thermal units per hour; and

HR = engine manufacturer's rated heat rate at the engines horsepower rating, in British thermal units per horsepower-hour.

Figure: 30 TAC §117.115(g)(3)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{PW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.105(c) of this title (expressed in ppmv NO_X at 15% O_2, dry basis);

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{PW} = plant-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.123(b)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each emission unit in the emission cap;

N = the total number of emission units in the emission cap;

H_i = (A) for compliance with §117.105(a) – (d) of this title. The actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units per day (MMBtu/day), as certified to the executive director, for a 24 consecutive month period between January 1, 1990, and June 9, 1993, plus one standard deviation of the average daily heat input for that period. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director may approve another method for calculating H_i; and

(B) for compliance with §117.105(e) or §117.110 of this title. The actual historical average of the daily heat input for each unit included in the source cap, in MMBtu/day, as certified to the executive director, for a 24 consecutive month period between January 1, 1997, and December 31, 1999. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director and United States Environmental Protection Agency may approve another method for calculating H_i. For sources complying with the lean-burn engine emission specifications in §117.105(e) of this title, the owner or operator may combine the source cap with sources complying with §117.105(a) – (d) of this title, using the 1997 - 1999 heat input baseline described earlier for the sources complying with §117.105(a) – (d) of this title; and

R_i = (A) for compliance with §117.105(a) – (d) of this title.

(i) for emission units subject to the federal New Source Review requirements of 40 Code of Federal Regulations (CFR) §§51.165(a), 51.166, or 52.21, or to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that implements these federal requirements, or emission units that have been subject to a New Source Performance Standard requirement of 40 CFR Part 60 prior to June 9, 1993, R_i is the lowest of the actual emission rate or all applicable federally enforceable NO_X emission limitations as of June 9, 1993, in pounds per million British thermal units (lb/MMBtu), that apply to emission unit I in the absence of trading. All calculations of emission rates must presume that emission controls

in effect on June 9, 1993, are in effect for the two-year period used in calculating the actual heat input; and

(ii) for all other emission units, R_i is the lowest of the reasonably available control technology (RACT) limit of §117.105(b) – (d) or §117.115(f) of this title or the best available control technology NO_X limit for any unit subject to a permit issued in accordance with Chapter 116 of this title, in lb/MMBtu, that applies to emission unit I in the absence of trading; and

(B) for compliance with §117.105(e) or §117.110 of this title, the lowest of:

(i) the appropriate specification of §§117.105(e), 117.110, or 117.115(f) of this title;

(ii) any permit NO_X emission limit for any unit subject to a permit issued in accordance with Chapter 116 of this title, in lb/MMBtu, that applies to emission unit I in the absence of trading, in effect on September 10, 1993; and

(iii) the actual emission rate as of the dates specified in clause (ii) of this figure. All calculations of emission rates must presume that emission controls in effect on the dates specified in clause (ii) of this figure are in effect for the two-year period used in calculating the actual heat input.

Figure: 30 TAC §117.123(b)(2)

$$Cap_{daily} = \sum_{i=1}^{N} \left(H_{mi} \times R_i \right)$$

Where:

Cap_{daily} = the NO_X maximum daily cap measured in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.205(b)(6)

$$EL_2 = \frac{(EL_1 \times 1.25 \times T_1) + (EL_1 \times T_2)}{T_1 + T_2}$$

Where:

EL_2 = time-weighted NO_X emission limitation for each 30-day period, in lb/MMBtu of heat input;

EL_1 = appropriate NO_X emission specification for gas-fired boiler from §117.205(b)(1)(A) - (F) of this title or gas-fired process heaters from §117.205(b)(2)(A) - (B) of this section, in lb/MMBtu of heat input;

1.25 = factor used as a multiplier times the appropriate emission limitation when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period;

T_1 = time in hours when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period during each 30-day period. The time period when hydrogen rich fuel is combusted must, at a minimum, be a consecutive eight-hour period to be used in the determination of T_1; and

T_2 = time in hours when firing gaseous fuel or hydrogen rich fuel (for less than eight consecutive hours) during each 30-day period.

Figure: 30 TAC §117.215(f)(4)

§117.215(f) OPT-IN UNITS

Equipment Class/Description	Emission Specification
fluid catalytic cracking unit carbon monoxide (CO) boilers	50% NO_X reduction across the inlet of the CO boiler to the outlet of the CO boiler, with the outlet concentration in ppmv converted into lb/MMBtu of heat input
lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower (hp) or greater	5.0 g/hp-hr of NO_X under all operating conditions
boilers or process heaters with a maximum rated capacity (MRC): 40 million British thermal units per hour (MMBtu/hr) ≤MRC< 100 MMBtu/hr	the emission specifications in §117.205(a) of this title for the applicable type of unit
stationary gas turbines with a megawatt (MW) rating: 1.0 MW ≤MW rating < 10.0 MW	42 ppmv NO_X at 15% O_2, dry basis
boilers and industrial furnaces that are regulated as existing facilities by 40 Code of Federal Regulations Part 266, Subpart H	the appropriate emission specification in §117.205(b) of this title

Figure: 30 TAC §117.215(g)(1)

$$EL_{PW} = MRC \times ES$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in lb/MMBtu; and

MRC = maximum rated capacity in million British thermal units per hour.

Figure: 30 TAC §117.215(g)(2)

$$EL_{PW} = \frac{MRC \times ES}{HR \times \left(454 \times 10^{6}\right)}$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in g/hp-hr;

MRC = engine manufacturer's rated heat input in million British thermal units per hour; and

HR = engine manufacturer's rated heat rate at the engines horsepower rating, in British thermal units per horsepower-hour.

Figure: 30 TAC §117.215(g)(3)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{PW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in ppmv;

A_{NOX} = the applicable NO_X emission specification of §117.205(c) of this title (expressed in ppmv NO_X at 15% O_2, dry basis);

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{PW} = plant-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.223(b)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap measured in pounds per day;

i = each emission unit in the emission cap;

N = the total number of emission units in the emission cap;

H_i = (A) for compliance with §117.205(a) - (d) of this title. The actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units per day (MMBtu/day), as certified to the executive director, for a 24 consecutive month period between January 1, 1990, and June 9, 1993, plus one standard deviation of the average daily heat input for that period. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director may approve another method for calculating H_i; and

(B) for compliance with §117.210 of this title. The actual historical average of the daily heat input for each unit included in the source cap, in MMBtu/day, as certified to the executive director, for a 24 consecutive month period between January 1, 1997, and December 31, 1999. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director and the United States Environmental Protection Agency may approve another method for calculating H_i; and

R_i = (A) for compliance with §117.205(a) - (d) of this title:

(i) for emission units subject to the federal New Source Review requirements of 40 Code of Federal Regulations (CFR) §§51.165(a), 51.166, or 52.21, or to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that implements these federal requirements, or emission units that have been subject to a New Source Performance Standard requirement of 40 CFR Part 60 prior to June 9, 1993, R_i is the lowest of the actual emission rate or all applicable federally enforceable NO_X emission limitations as of June 9, 1993, in pounds per million British thermal units (lb/MMBtu), that apply to emission unit I in the absence of trading. All calculations of emission rates must presume that emission controls in effect on June 9, 1993, are in effect for the two-year period used in calculating the actual heat input; and

(ii) for all other emission units, R_i is the lowest of the reasonably available control technology (RACT) limit of §117.205(b) – (d) or §117.215(f) of this title or the best available control technology NO_X limit for any unit subject to a permit

issued in accordance with Chapter 116 of this title, in lb/MMBtu, that applies to emission unit I in the absence of trading; and

(B) for compliance with §117.210 of this title, the lowest of:

(i) the appropriate limit of §117.210 or §117.215(f) of this title;

(ii) any permit NO_X emission limit for any unit subject to a permit issued in accordance with Chapter 116 of this title, in lb/MMBtu , that applies to emission unit I in the absence of trading, in effect on September 1, 1997; and

(iii) the actual emission rate as of the dates specified in clause (ii) of this subparagraph. All calculations of emission rates must presume that emission controls in effect on the dates specified in clause (ii) of this subparagraph are in effect for the two-year period used in calculating the actual heat input.

Figure: 30 TAC §117.223(b)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap measured in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.305(b)(6)

$$EL_2 = \frac{(EL_1 \times 1.25 \times T_1) + (EL_1 \times T_2)}{T_1 + T_2}$$

Where:

EL_2 = time-weighted NO_X emission limitation for each 30-day period, in lb/MMBtu of heat input;

EL_1 = appropriate NO_X emission limitation for gas-fired boilers from §117.305(b)(1)(A) - (F) of this title or gas-fired process heaters from §117.305(b)(2)(A) and (B) of this section, in lb/MMBtu of heat input;

1.25 = factor used as a multiplier times the appropriate emission limitation when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period;

T_1 = time in hours when firing gaseous fuel that contains more than 50% hydrogen by volume, over an eight-hour period during each 30-day period. The time period when hydrogen rich fuel is combusted must, at a minimum, be a consecutive eight-hour period to be used in the determination of T_1; and

T_2 = time in hours when firing gaseous fuel or hydrogen rich fuel (for less than eight consecutive hours) during each 30-day period.

Figure: 30 TAC §117.315(f)(4)

§117.315(f) OPT-IN UNITS

Equipment Class/Description	Emission Specification
fluid catalytic cracking unit CO boilers	50% NO_X reduction across the inlet of the CO boiler to the outlet of the CO boiler, with the outlet concentration in ppmv converted into lb/MMBtu of heat input
lean-burn, gas-fired, stationary, reciprocating internal combustion engines rated 150 horsepower (hp) or greater	5.0 g/hp-hr of NO_X under all operating conditions
boilers or process heaters with a maximum rated capacity (MRC): 40 million British thermal units per hour (MMBtu/hr) ≤MRC< 100 MMBtu/hr	the emission specifications in §117.305(a) of this title for the applicable type of unit
stationary gas turbines with a megawatt (MW) rating: 1.0 MW ≤MW rating < 10.0 MW	42 ppmv NO_X at 15% O_2, dry basis
boilers and industrial furnaces that are regulated as existing facilities by 40 Code of Federal Regulations Part 266, Subpart H	the appropriate emission limitation in §117.305(b) of this title

Figure: 30 TAC §117.315(g)(1)

$$EL_{PW} = MRC \times ES$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in lb/MMBtu; and

MRC = maximum rated capacity in million British thermal units per hour.

Figure: 30 TAC §117.315(g)(2)

$$EL_{PW} = \frac{MRC \times ES}{HR \times (454 \times 10^{6})}$$

Where:

EL_{PW} = plant-wide emission specification in pounds per hour;

ES = emission specification in g/hp-hr;

MRC = engine manufacturer's rated heat input in million British thermal units per hour; and

HR = engine manufacturer's rated heat rate at the engines horsepower rating, in British thermal units per horsepower-hour.

Figure: 30 TAC §117.315(g)(3)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{PW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in ppmv;

A_{NOX} = the applicable NO_X emission specification of §117.305(c) of this title (expressed in ppmv NO_X at 15% O_2, dry basis);

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{PW} = plant-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.320(c)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H_i = (A) the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day (MMBtu per day), as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1997, 1998, and 1999;

(B) for an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1997 - 1999 may be used;

(C) the level of activity authorized by the executive director for the third quarter (July, August, and September), until such time two consecutive third quarters of actual level of activity data are available after the end of the adjustment period as defined in §101.350 of this title (relating to Definitions), must be used for the following:

(i) an EGF that the owner or operator has submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application determined to be administratively complete by the executive director before January 2, 2001;

(ii) an EGF that qualifies for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and have commenced construction before January 2, 2001; and

(iii) an EGF that was not in operation before January 1, 1997;

(D) after two consecutive third quarters of actual level of activity data are available for an EGF described in subsection (c)(1) of this section, variable (C) of this figure, the owner or operator may calculate the baseline as the average of any two consecutive third quarters in the first five years of operation. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title; and

(E) in extenuating circumstances, the owner or operator of an EGF may request, subject to approval of the executive director, up to two additional calendar years to

establish the baseline period described in subsection (c)(1) of this section, variable (A) - (D) of this figure. Applications seeking an alternate baseline period must be submitted by the owner or operator of the EGF to the executive director:

(i) no later than December 31, 2001; or

(ii) for an EGF that the baseline period as described in subsection (c)(1) of this section, variable (A) - (D) of this figure is not complete by December 31, 2001, no later than 90 days after completion of the baseline period; and

R_i = the emission specification of §117.310(a) of this title.

Figure: 30 TAC §117.320(c)(2)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H_i = (A) the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day (MMBtu per day) , as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1997, 1998, and 1999. For an EGF that the system highest 30-day period in 1997 - 1999 occurs in months other than July - September, the owner or operator may substitute the system highest 30-day period in the nine months comprising the highest three consecutive months in each year of the 1997 - 1999 period;

(B) for an EGF exempt from the 40 CFR Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1997 - 1999 may be used;

(C) the level of activity authorized by the executive director for the third quarter (July, August, and September), until such time two consecutive third quarters of actual level of activity data are available after the end of the adjustment period as defined in §101.350 of this title, must be used for the following:

(i) an EGF that the owner or operator has submitted, under Chapter 116 of this title, an application determined to be administratively complete by the executive director before January 2, 2001;

(ii) an EGF that qualifies for a permit by rule under Chapter 106 of this title and commenced construction before January 2, 2001; and

(iii) an EGF that was not in operation before January 1, 1997;

(D) after two consecutive third quarters of actual level of activity data are available for an EGF described in subsection (c)(1) of this section, variable (C) of this figure, the owner or operator may calculate the baseline as the average of any two consecutive third quarters in the first five years of operation. For an EGF that the system highest 30-day period in the first two years of operation occurs in months other than July - September, the owner or operator may substitute the system highest 30-day period in the six months comprising the highest three consecutive months in

any two consecutive years in the first five years of operation. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title; and

(E) in extenuating circumstances, the owner or operator of an EGF may request, subject to approval of the executive director, up to two additional calendar years to establish the baseline period described in subsection (c)(1) of this section, variable (A) - (D) of this figure. Applications seeking an alternate baseline period must be submitted by the owner or operator of the EGF to the executive director:

(i) no later than December 31, 2001; or

(ii) for an EGF that the baseline period as described in subsection (c)(1) of this section, variable (A) - (D) of this figure is not complete by December 31, 2001, no later than 90 days after completion of the baseline period; and

R_i = the emission specification of §117.310(a) of this title.

Figure: 30 TAC §117.320(c)(3)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.323(b)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each emission unit in the emission cap;

N = the total number of emission units in the emission cap;

H_i = for compliance with §117.305(a) - (d) of this title. The actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units per day (MMBtu per day), as certified to the executive director, for a 24 consecutive month period between January 1, 1990, and June 9, 1993, plus one standard deviation of the average daily heat input for that period. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director may approve another method for calculating H_i; and

R_i = for compliance with §117.305(a) – (d) of this title:

(i) for emission units subject to the federal New Source Review requirements of 40 Code of Federal Regulations (CFR) §§51.165(a), 51.166, or 52.21, or to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) that implement these federal requirements, or emission units that have been subject to a New Source Performance Standard requirement of 40 CFR Part 60 prior to June 9, 1993, R_i is the lowest of the actual emission rate or all applicable federally enforceable emission limitations as of June 9, 1993, in pounds per million British thermal units (lb/MMBtu), that apply to emission unit I in the absence of trading. All calculations of emission rates must presume that emission controls in effect on June 9, 1993, are in effect for the two-year period used in calculating the actual heat input; and

(ii) for all other emission units, R_i is the lowest of the reasonably available control technology (RACT) limit of §117.305(b) - (d) or §117.315(f) of this title or the best available control technology NO_X limit for any unit subject to a permit issued in accordance with Chapter 116 of this title, in lb/MMBtu, that applies to emission unit I in the absence of trading.

Figure: 30 TAC §117.323(b)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.423(b)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each emission unit in the emission cap;

N = the total number of emission units in the emission cap;

H_i = the actual historical average of the daily heat input for each unit included in the source cap, in million British thermal units per day, as certified to the executive director, for a 24 consecutive month period between January 1, 2000, and December 31, 2001. All sources included in the source cap must use the same 24 consecutive month period. If sufficient historical data are not available for this calculation, the executive director and the United States Environmental Protection Agency may approve another method for calculating H_i; and

R_i = the lowest of:

(i) the appropriate specification of §117.410 of this title;

(ii) any permit NO_X emission limit for any unit subject to a permit issued in accordance with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), in pounds per million British thermal units (lb/MMBtu), that applies to emission unit I in the absence of trading, in the Dallas-Fort Worth eight-hour ozone nonattainment area, in effect on December 31, 2000; and

(iii) the actual emission rate as of the dates specified in clause (ii) of this figure. All calculations of emission rates must presume that emission controls in effect on the dates specified in clause (ii) of this figure are in effect for the two-year period used in calculating the actual heat input.

Figure: 30 TAC §117.423(b)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a 24-hour period; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.423(b)(4)

$$Cap_{ICE} = \frac{MRC \times ES}{HR \times (454 \times 10^6)}$$

Where:

Cap_{ICE} = source cap allowable emission rate in pounds per hour;

ES = emission specification in grams per horsepower-hour (g/hp-hr);

MRC = engine manufacturer's rated heat input in million British thermal units per hour; and

HR = engine manufacturer's rated heat rate at the engines horsepower (hp) rating, in British thermal units per horsepower-hour.

Figure: 30 TAC §117.423(b)(5)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$\text{Cap}_{GT} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.410(b) of this title (expressed in ppmv NO_X at 15% oxygen (O_2), dry basis);

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

Cap_{GT} = source cap allowable emission rate in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.1005(d)

$$EL = \frac{(0.26a + 0.30b)}{(a + b)}$$

Where:

EL = emission specification (heat input weighted average) on a rolling 24-hour average basis;

a = the percentage of total heat input from natural gas; and

b = the percentage of total heat input from fuel oil.

Figure: 30 TAC §117.1015(d)(1)

$$EL_{SW} = R \times ES$$

Where:

EL_{SW} = system-wide emission specification in pounds per hour;

ES = emission specification in lb/MMBtu; and

R = average activity level for fuel oil firing or maximum rated capacity for gas firing, in million British thermal units per hour (MMBtu/hr).

Figure: 30 TAC §117.1015(d)(2)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{SW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.1005(f) or (g) of this title, in ppmv NO_X at 15% oxygen (O_2), dry basis;

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{SW} = system-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.1020(c)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H_i = the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1996, 1997, and 1998. For an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1996 - 1998 may be used; and

R_i = the emission specification of §117.1010(a) of this title.

Figure: 30 TAC §117.1020(c)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.1105(d)

$$EL = \frac{(0.26a + 0.30b)}{(a + b)}$$

Where:

EL = emission specification (heat input weighted average) on a rolling 24-hour average basis;

a = the percentage of total heat input from natural gas; and

b = the percentage of total heat input from fuel oil.

Figure: 30 TAC §117.1115(d)(1)

$$EL_{SW} = R \times ES$$

Where:

EL_{SW} = system-wide emission specification in pounds per hour;

ES = emission specification in pounds per million British thermal units (lb/MMBtu); and

R = average activity level for fuel oil firing or maximum rated capacity for gas firing, in million British thermal units per hour (MMBtu/hr).

Figure: 30 TAC §117.1115(d)(2)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{SW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.1105(f) or (g) of this title, in ppmv NO_X at 15% oxygen (O_2), dry basis;

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{SW} = system-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.1120(c)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H_i = the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for the system highest 30-day period in the nine months of July, August, and September 1996, 1997, and 1998. For an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to the system highest 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1996 - 1998 may be used; and

R_i = the emission specification of §117.1110(a) of this title.

Figure: 30 TAC §117.1120(c)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.1205(d)

$$EL = \frac{(0.26a + 0.30b)}{(a + b)}$$

Where:

EL = emission specification (heat input weighted average) on a rolling 24-hour average basis;

a = the percentage of total heat input from natural gas; and

b = the percentage of total heat input from fuel oil.

Figure: 30 TAC §117.1215(d)(1)

$$EL_{sw} = R \times ES$$

Where:

EL_{sw} = system-wide emission specification in pounds per hour;

ES = emission specification in lb/MMBtu; and

R = average activity level for fuel oil firing or maximum rated capacity for gas firing, in million British thermal units per hour (MMBtu/hr).

Figure: 30 TAC §117.1215(d)(2)

$$C_{instack} = A_{NO_X} \times \left(1 - \frac{\%H_2O}{100}\right) \times \left[\left(20.9 - \frac{\%O_2}{\left(1 - \frac{\%H_2O}{100}\right)}\right) \times \frac{1}{5.9}\right]$$

$$EL_{SW} = C_{instack} \times MF \times \left(\frac{46}{28} \times 10^{-6}\right)$$

Where:

$C_{instack}$ = the NO_X in-stack concentration in parts per million by volume (ppmv);

A_{NOX} = the applicable NO_X emission specification of §117.1205(f) or (g) of this title (relating to Emission Specifications for Reasonably Available Control Technology (RACT)), in ppmv NO_X at 15% oxygen (O_2), dry basis;

$\%H_2O$ = the volume percent of water in the stack gases, as calculated from the manufacturer's data, or other data as approved by the executive director, at megawatt (MW) rating and International Standards Organization (ISO) flow conditions;

$\%O_2$ = the volume percent of O_2 in the stack gases on a wet basis, as calculated from the manufacturer's data or other data as approved by the executive director, at MW rating and ISO conditions;

EL_{SW} = system-wide emission specification in pounds per hour; and

MF = the turbine manufacturer's rated exhaust flow rate, in pounds per hour at MW rating and ISO flow conditions.

Figure: 30 TAC §117.1220(c)(1)

$$Cap_{30day} = \sum_{i=1}^{N} (H_i \times R_i)$$

Where:

Cap_{30day} = the NO_X 30-day rolling average emission cap in pounds per day;

i = each EGF in the electric power generating system;

N = the total number of EGFs in the emission cap;

H_i = (A) the average of the daily heat input for each EGF in the emission cap, in million British thermal units per day, as certified to the executive director, for any system 30-day period in the nine months of July, August, and September 1997, 1998, and 1999;

(B) for an EGF exempt from the 40 Code of Federal Regulations (CFR) Part 75 monitoring requirements, if the heat input data corresponding to any system 30-day period (as determined for an EGF in the system subject to 40 CFR Part 75 monitoring) is not available, the daily average of the highest calendar month heat input in 1997 - 1999 may be used;

(C) the level of activity authorized by the executive director for the third quarter (July, August, and September), until such time two consecutive third quarters of actual level of activity data are available, must be used for the following:

(i) an EGF that the owner or operator has submitted, under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), an application determined to be administratively complete by the executive director before January 2, 2001;

(ii) an EGF that qualifies for a permit by rule under Chapter 106 of this title (relating to Permits by Rule) and has commenced construction before January 2, 2001; and

(iii) an EGF that was not in operation before January 1, 1997;

(D) after two consecutive third quarters of actual level of activity data are available for an EGF described in subsection (c)(1) of this section, variable (C) of this figure, the owner or operator may calculate the baseline as the average of any two consecutive third quarters in the first five years of operation. The five-year period begins at the end of the adjustment period as defined in §101.350 of this title (relating to Definitions); and

(E) in extenuating circumstances, the owner or operator of an EGF may request, subject to approval of the executive director, up to two additional calendar years to establish the baseline period described in subsection (c)(1) of this section, variables

(A) - (D) of this figure. Applications seeking an alternate baseline period must be submitted by the owner or operator of the EGF to the executive director:

(i) no later than December 31, 2001; or

(ii) for an EGF that the baseline period as described in subsection (c)(1) of this section, variables (A) - (D) of this figure is not complete by December 31, 2001, no later than 90 days after completion of the baseline period; and

R_i = the emission specification of §117.1210(a) of this title.

Figure: 30 TAC §117.1220(c)(2)

$$Cap_{daily} = \sum_{i=1}^{N} (H_{mi} \times R_i)$$

Where:

Cap_{daily} = the NO_X maximum daily cap in pounds per day;

i = as defined in paragraph (1) of this subsection;

N = as defined in paragraph (1) of this subsection;

H_{mi} = the maximum daily heat input, as certified to the executive director, allowed or possible (whichever is lower) in a day; and

R_i = as defined in paragraph (1) of this subsection.

Figure: 30 TAC §117.1310(a)(2)(C)

$$EL = \frac{(0.26a + 0.30b)}{(a + b)}$$

Where:

EL = emission specification (heat input weighted average) on a rolling 24-hour average basis;

a = the percentage of total heat input from natural gas; and

b = the percentage of total heat input from fuel oil; and

Figure: 30 TAC §117.3020(c)

$$Cap_{annual} = \sum_{i=1}^{N} \frac{(H_i \times R_i)}{2000}$$

Where:

Cap_{annual} = the NO_X annual average emission cap in tons per year;

i = each unit in the electric power generating system;

N = the total number of units in the emission cap;

H_i = the average of the annual heat input for each unit in the emission cap, in million British thermal units per year, as certified to the executive director, for 1996, 1997, and 1998; and

R_i = the emission specification of §117.3010 of this title.

Figure: 30 TAC §117.3120(a)

$$Cap = 0.7\sum_{i=1}^{N} R_i$$

Where:

Cap = 90-day rolling average NO_X emission cap, in ppd;

i = each cement kiln at a single account;

N = the total number of cement kilns at the account; and

R_i = the kiln's ozone season daily NO_X emission rate (in ppd) reported in the account's 1996 EI.

Figure: 30 TAC §117.3123(b)

$$Cap_{8hour} = (N_W \times K_W) + (N_D \times K_D)$$

Where:

Cap_{8hour} = total allowable NO_X emissions from all cement kilns located at an account, tons per day, 30-day rolling average basis;

K_D = 2.84 tons per day of NO_X emissions for dry preheater-precalciner or precalciner kilns;

K_W = 1.39 tons per day of NO_X emissions for long wet kilns;

N_D = the total number of dry preheater-precalciner or precalciner kilns located at the account and operational during calendar year 2000; and

N_W = the total number of long wet kilns located at the account and operational during calendar year 2000.

Figure: 30 TAC §117.3142(b)(1)

$$EH = C \times F \times K \times \frac{60\text{min}}{\text{hour}}$$

Where:

EH = total hourly NO_X emissions from each kiln located at the account, in pounds per hour;

C = the block hour average NO_X concentration, determined in accordance with subsection (a)(1) of this section, in parts per million by volume (ppmv), dry basis, corrected to 7% oxygen (O_2);

F = the block average exhaust flow rate, determined in accordance with subsection (a)(2) of this section, in dry standard cubic feet per minute, corrected to 7% O_2; and

K = conversion factor, 1.194×10^{-7} pounds per standard cubic foot per ppmv (40 CFR Part 60, Appendix A, Method 19, Table 19-1).

Figure: 30 TAC §117.3142(b)(2)

$$ED = \frac{\sum_{i=1}^{N} EH_i}{2000}$$

Where:

ED = total daily NO_X emissions from each kiln located at the account, in tons per day;

EH = total hourly NO_X emissions from each kiln located at the account, in pounds per hour calculated according to the equation in subsection (b)(1) of this section; and

N = number of hours of operation per day for each kiln located at the account, in hours.

Figure: 30 TAC §117.3142(b)(3)

$$E_{30day} = \frac{\sum_{i=1}^{K}\sum_{j=1}^{N} ED_{i,j}}{N}$$

Where:

E_{30day} = rolling 30-day average NO_X emissions in tons per day for the account, computed for the preceding 30 days;

ED = total daily NO_X emissions from each kiln located at the account, in tons per day, calculated according to the equation in subsection (b)(2) of this section;

K = number of kilns located at the account; and

N = preceding 30 days.

Figure: 30 TAC §117.8130(1)

$$NH_3@O_2 = \left[\left(\frac{a}{b}\times 10^6\right) - c\right]\times d$$

Where:

$NH_3@O_2$ = ammonia parts per million by volume (ppmv) at reference oxygen. Reference oxygen on a dry basis is 3.0% for boilers and process heaters; 0.0% for fluid catalytic cracking units (including carbon monoxide (CO) boilers, CO furnaces, and catalyst regenerator vents); 7.0% for boilers and industrial furnaces that were regulated as existing facilities by the United States Environmental Protection Agency 40 Code of Federal Regulations Part 266, Subpart H (as was in effect on June 9, 1993), wood-fired boilers, and incinerators; 15% for stationary gas turbines (including duct burners used in turbine exhaust ducts), gas-fired lean-burn engines, and lightweight aggregate kilns; and 3.0% for all other units;

a = ammonia injection rate (in pounds per hour (lb/hr))/17 pound per pound-mole (lb/lb-mol);

b = dry exhaust flow rate (lb/hr)/29 lb/lb-mol;

c = change in measured NO_X concentration across catalyst (ppmv at reference oxygen); and

d = correction factor, the ratio of measured slip to calculated ammonia slip, where the measured slip is obtained from the stack sampling for ammonia during an initial demonstration of compliance required by this chapter and using the methods specified in §117.8000 of this title (relating to Stack Testing Requirements).

Figure: 30 TAC §117.9800(d)

$$\Delta E = \left[LA \times \left(ER_{old} - ER_{new} \right) \times \frac{d}{2000} \right]$$

Where:

ΔE = the differential of emissions;

LA = the maximum level of activity;

ER_{old} = the existing NO_X emission rate for the affected unit in pounds per unit of activity;

ER_{new} = the new NO_X emission rate for the affected unit in pounds per unit of activity; and

d = (A) to calculate annual emission reductions, d = 365; and

(B) to calculate emission reductions for the remainder of a control period, d = the number of days remaining in the control period.

Figure: 40 TAC §821.5

EMPLOYMENT STATUS – A COMPARATIVE APPROACH

Under the common law test, a worker is an employee if the purchaser of that worker's service has the right to direct or control the worker, both as to the final results and as to the details of when, where, and how the work is done. Control need not actually be exercised; rather, if the service recipient has the *right* to control, employment may be shown.

Depending upon the type of business and the services performed, not all 20 common law factors may apply. In addition, the weight assigned to a specific factor may vary depending on the facts of the case.

If an employment relationship exists, it does not matter that the employee is called something different, such as agent, contract laborer, subcontractor, or independent contractor.

1. INSTRUCTIONS:

An Employee receives instructions about when, where and how the work is to be performed.

An Independent Contractor does the job his or her own way with few, if any, instructions as to the details or methods of the work.

2. TRAINING:

Employees are often trained by a more experienced employee or are required to attend meetings or take training courses.

An Independent Contractor uses his or her own methods and thus need not receive training from the purchaser of those services.

3. INTEGRATION:

Services of an Employee are usually merged into the firm's overall operation; the firm's success depends on those Employee services.

An Independent Contractor's services are usually separate from the client's business and are not integrated or merged into it.

4. SERVICES RENDERED PERSONALLY:

An Employee's services must be rendered personally; Employees do not hire their own substitutes or delegate work to them.

A true Independent Contractor is able to assign another to do the job in his or her place and need not perform services personally.

5. HIRING, SUPERVISING & PAYING HELPERS:

An Employee may act as a foreman for the employer but, if so, helpers are paid with the employer's funds.

Independent Contractors select, hire, pay and supervise any helpers used and are responsible for the results of the helpers' labor.

6. CONTINUING RELATIONSHIP:

An Employee often continues to work for the same employer month after month or year after year.

An Independent Contractor is usually hired to do one job of limited or indefinite duration and has no expectation of continuing work.

7. SET HOURS OF WORK:

An Employee may work "on call" or during hours and days as set by the employer.

A true Independent Contractor is the master of his or her own time and works the days and hours he or she chooses.

11. ORAL OR WRITTEN REPORTS:

An Employee may be required to submit regular oral or written reports about the work in progress.

An Independent Contractor is usually not required to submit regular oral or written reports about the work in progress.

12. PAYMENT BY THE HOUR, WEEK OR MONTH:

An Employee is typically paid by the employer in regular amounts at stated intervals, such as by the hour or week.

An Independent Contractor is normally paid by the job, either a negotiated flat rate or upon submission of a bid.

13. PAYMENT OF BUSINESS & TRAVEL EXPENSE:

An Employee's business and travel expenses are either paid directly or reimbursed by the employer.

Independent Contractors normally pay all of their own business and travel expenses without reimbursement.

14. FURNISHING TOOLS & EQUIPMENT:

Employees are furnished all necessary tools, materials and equipment by their employer.

An Independent Contractor ordinarily provides all of the tools and equipment necessary to complete the job.

15. SIGNIFICANT INVESTMENT:

An Employee generally has little or no investment in the business. Instead, an Employee is economically dependent on the employer.

True Independent Contractors usually have a substantial financial investment in their independent business.

16. REALIZE PROFIT OR LOSS:

An Employee does not ordinarily realize a profit or loss in the business. Rather, Employees are paid for services rendered.

An Independent Contractor can either realize a profit or suffer a loss depending on the management of expenses and revenues.

17. WORKING FOR MORE THAN ONE FIRM AT A TIME:

An Employee ordinarily works for one employer at a time and may be prohibited from joining a competitor.

An Independent Contractor often works for more than one client or firm at the same time and is not subject to a non-competition rule.

8. FULL TIME REQUIRED:

An Employee ordinarily devotes full-time service to the employer, or the employer may have a priority on the Employee's time.

A true Independent Contractor cannot be required to devote full-time service to one firm exclusively.

9. LOCATION WHERE SERVICES PERFORMED:

Employment is indicated if the employer has the right to mandate where services are performed

Independent Contractors ordinarily work where they choose. The workplace may be away from the client's premises.

10. ORDER OR SEQUENCE SET:

An Employee performs services in the order or sequence set by the employer. This shows control by the employer.

A true Independent Contractor is concerned only with the finished product and sets his or her own order or sequence of work.

C-8(994) Inv. No. 518975

18. MAKING SERVICE AVAILABLE TO THE PUBLIC:

An Employee does not make his or her services available to the public except through the employer's company.

An Independent Contractor may advertise, carry business cards, hang out a shingle or hold a separate business license.

19. RIGHT TO DISCHARGE WITHOUT LIABILITY:

An Employee can be discharged at any time without liability on the employer's part.

If the work meets the contract terms, an Independent Contractor cannot be fired without liability for breach of contract.

20. RIGHT TO QUIT WITHOUT LIABILITY:

An Employee may quit work at any time without liability on the Employee's part.

An Independent Contractor is legally responsible for job completion and, on quitting, becomes liable for breach of contract.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Proposals

Notice is hereby given of a Request for Proposals by Texas State Affordable Housing Corporation (the Corporation) for Master Servicer for its single family private activity bond programs. Proposals will be due at the Corporation's offices in Austin by 5:00 p.m. on Friday, January 12, 2007.

The Request for Proposals can be viewed and downloaded from the Corporation's website at www.tsahc.org.

Any questions about the Requests for Proposals should be directed to Robin Miller by E-mail at rmiller@firstsw.com, by fax at (214) 953-8799, or by phone at (214) 953-4174.

TRD-200606844
David Long
President
Texas State Affordable Housing Corporation
Filed: December 20, 2006

♦ ♦ ♦

Texas Department of Agriculture

Notice Regarding Percentage Volume of Texas Grapes Required by Texas Alcoholic Beverage Code, Section 16.011

Texas Agriculture Code, Section 12.039, as enacted by the 79th Legislature, Regular Session, 2005, in Senate Bill 1137 (Section 12.039), provides that the Commissioner of Agriculture may reduce the percentage by volume of fermented juice of Texas grapes, or other fruit, that wine produced by a wineries located in a dry areas of Texas must contain under Texas Alcoholic Beverage Code, Section 16.011. The Commissioner has received a report from the Texas Wine Marketing Research Institute for the 2006 Texas wine grape crop year, as provided for in Section 12.039. Upon review of that report and other information provided regarding the 2006 wine grape crop, the Commissioner has determined that there is sufficient information to support a reduction of the percentage of Texas grown grapes and fruit that is required by Section 16.011 to be in wine produced by wineries located in dry areas of Texas from 75% to 25% for the 2007 calendar year.

In accordance with Section 12.039(g), if a winery in a dry area of Texas finds, even after the commissioner's reduction of the percentage volume requirement to 25%, that a particular variety of a Texas-grown grape or other fruit is not available to a level sufficient for the winery to meet the winery's planned production for the relevant year, the winery may request that the commissioner further reduce the percentage requirement. The winery must submit documentation to the commissioner substantiating that the winery has not been able to acquire those grapes or other fruit grown in this state in an amount sufficient to meet the winery's production needs and to comply with the requirements of Section 16.011, as adjusted by the commissioner. If the commissioner determines that there is not a sufficient quantity of that variety of grapes or other fruit grown in this state to meet the needs of that winery, the commissioner may further reduce the percentage requirement for wine bottled during the remainder of the calendar year that contains that variety of Texas-grown grape or fruit.

TRD-200606850
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: December 20, 2006

♦ ♦ ♦

Office of the Attorney General

Request for Proposal

This Request for Proposal is filed pursuant to Texas Government Code, section 2254.021 et seq.

The Office of the Attorney General of Texas ("the OAG") requests that professional consultants with documented expertise and experience in the field of indirect cost recovery and cost allocation plans for governmental units submit proposals to prepare Indirect Cost Plans for State Fiscal Years 2006 ("FY06") (based on actual expenditures) and 2008 ("FY08") (based on budgeted expenditures) and to analyze and update standardized billing rates for legal services provided by the OAG. In accordance with Texas Government Code section 2254.029(b), the OAG hereby discloses that similar services related to indirect cost plans and legal billing rates covering earlier fiscal years have been previously provided to the OAG by a consultant.

The OAG administers millions of dollars of federal funds for the Child Support (Title IV-D) and Medicaid (Title XIX) programs. Currently, the OAG is recouping its indirect costs from these federal programs based on rates approved by the United States Department of Health and Human Services ("HHS").

The OAG also provides legal services to other state agencies. The consultant selected will be responsible for analyzing the existing billing rates and actual costs and then updating the legal services rates for use in FY08.

The consultant selected to prepare the Indirect Cost Plans and to develop current, standardized legal billing rates must demonstrate the necessary qualifications and experience listed in the "QUALIFICATIONS" section. The successful consultant will also be required to perform the services and generate the reports listed in the "SCOPE OF SERVICES" section. The acceptance of a proposal by the OAG, made in response to this Request for Proposal, will be based on the OAG's evaluation of the competence, knowledge, and qualifications of the consultant, in addition to the reasonableness of the proposed fee for services. If other considerations are equal, the OAG will give preference to a consultant whose principal place of business is in Texas or who will manage the consulting contract wholly from an office in Texas. The total contract award will not exceed Forty-Nine Thousand and NO/100 Dollars ($49,000.00).

SCOPE OF SERVICES

The successful consultant will be required to render the following services and reports:

1. Prepare two (2) Indirect Cost Plans in accordance with OMB Circular A-87 - one based on FY06 actual expenditures and one based on FY08 budgeted expenditures

*Identify the sources of financial information;

*Inventory all federal and other programs administered by the OAG;

*Classify all OAG divisions;

*Determine administrative divisions;

*Determine allocation bases for allotting services to benefitting divisions;

*Develop allocation data for each allocation base;

*Prepare allocation worksheets based upon actual FY06 expenditures and budgeted FY08 expenditures;

*Summarize costs by benefitting division;

*Collect cost data for all of the programs included in the inventory of federal and other programs administered by the OAG;

*Determine indirect cost rates throughout the OAG on an annual basis;

*Prepare and present draft Indirect Cost Plans to the OAG by April 10, 2007;

*Formalize the Actual FY06 and Budgeted FY08 Indirect Cost Plans and present them to HHS by April 30, 2007; and

*Negotiate the Indirect Cost Plans' approval with HHS by August 31, 2007.

2. Develop standardized billing rates for legal services

*Review current criteria used by the OAG for charging various agencies;

*Determine the types of legal services provided to the agencies;

*Compile direct hours for each type of service;

*Determine effort reporting requirements;

*Re-examine billing rate options;

*Determine the actual cost of services;

*Analyze and confirm revenues and cost analyses;

*Prepare and present a draft Legal Services Billing Schedule for FY 2006 actual costs and FY 2008 budgeted costs to the OAG by July 16, 2007; and

*Formalize a Legal Services Billing Schedule by August 31, 2007.

The selected consultant will accumulate and analyze all data that are required. The OAG is not expected to provide any staff resources to the selected consultant. The OAG will provide a liaison with staff within the OAG and with other state agencies, as appropriate.

QUALIFICATIONS

Each individual, company, or organization submitting a proposal pursuant to this request, must present evidence or otherwise demonstrate to the satisfaction of the OAG that such entity:

1. Has the experience to prepare and successfully negotiate the type of Indirect Cost Plan described above;

2. Has a thorough understanding of cost allocation issues and preparation of Indirect Cost Plans at the state agency level;

3. Has a thorough understanding of legal services billing procedures and preparation of a Legal Services Billing Schedule; and

4. Can program and execute the Indirect Cost Plans and Legal Services Billing Schedule within the required time frames specified in the "SCOPE OF SERVICES" section.

Please provide evidence of the above qualifications and a proposal which includes:

1. A detailed description of the plan of action to fulfill the requirements described in the "SCOPE OF SERVICES" section;

2. Detailed information on the consultant staff to be assigned to the project; and

3. The proposed fee amount for provision of the desired services.

A signed original and five (5) copies of the proposal must be received in the OAG Purchasing Section, 300 West 15th Street, Third Floor, Austin, Texas 78701, no later than 3:00 p.m., Central Standard Time, January 29, 2007. Any proposal received after the specified time and date will not be given consideration. Conditioned on the OAG's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code, section 2254.028, the OAG anticipates entering into the resultant contract on or about February 12, 2007.

A proposal must include all of the references and financial status information as specified below at the time of opening or it will be disqualified. Proposals should be sealed and clearly marked with the specified time and date and the title, "Proposal for Consulting Services for an Indirect Cost Recovery/Cost Allocation Plan and Legal Services Billing Schedule for the OAG".

REFERENCES AND FINANCIAL CONDITION

Prospective consultants will provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Proposal;

2. The services must have been provided by the prospective consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Proposal;

3. The reference company or entity must not be affiliated with the prospective consultant in any ownership or joint venture arrangement;

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The OAG may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective consultant throughout the performance of the engagement and who can address questions about the performance of the prospective consultant from personal experience. References will accompany the proposal.

5. The prospective consultant will provide a signed release from liability for each reference provided in response to this requirement. The release from liability will absolve the specified reference company or entity from liability for information provided to the OAG concerning the prospective consultant's performance of its engagement with the reference.

6. The prospective consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

7. As part of any proposal submission, the prospective consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective consultant's current financial condition. The OAG reserves the right to request such additional financial information as it deems necessary to evaluate the prospective consultant and, by submission of a proposal, the prospective consultant agrees to provide same.

DISCLOSURE

Any individual who provides a proposal for consulting services in response to this Request for Proposal and who has been employed by the OAG or any other state agency(ies) at any time during the two (2) years preceding the tendering of the proposal will disclose in the proposal:

1. the nature of the previous employment with the OAG or any other state agency(ies);

2. the date(s) the employment(s) terminated; and

3. the annual rate(s) of compensation for the employment(s) at the time(s) of termination.

Each consultant that submits a proposal must certify to the following:

1. consultant has no unresolved audit exceptions(s) with the OAG. An unresolved audit exception is an exception for which the consultant has exhausted all administrative and/or judicial remedies and refuses to comply with any resulting demand for payment.

2. consultant certifies that the consultant's staff or governing authority has not participated in the development of specific criteria for award of this contract and will not participate in the selection of consultant(s) awarded contracts.

3. consultant has not retained or promised to retain an agent or utilized or promised to utilize a consultant who has participated in the development of specific criteria for the award of contract, nor will participate in the selection of any successful consultant.

4. consultant agrees to provide information necessary to validate any statements made in consultant's response, if requested by the OAG. This may include, but is not limited to, granting permission for the OAG to verify information with third parties and allowing inspection of consultant's records.

5. consultant understands that failure to substantiate any statements made in the response when substantiation is requested by OAG may disqualify the response, which could cause the consultant to fail to receive a contract or to receive a contract for an amount less than that requested.

6. consultant certifies that the consultant's organization has not had a contract terminated or been denied the renewal of any contract for noncompliance with policies or regulation of any state or federal funded program within the past five years nor is it currently prohibited from contracting with a government agency.

7. consultant certifies that its Corporate Texas Franchise Tax payments are current, or that it is exempt from or not subject to such tax.

8. consultant has not given nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted response.

9. Neither the consultant nor the firm, corporation, partnership or institution represented by the consultant, anyone acting for such firm, corporation partnership or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly its response to any competitor or any other person engaged in such line or business.

10. Under §231.006 Family Code (relating to child support), the consultant certifies that the individual or business entity named in this response is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

11. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

12. consultant certifies that, if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

13. consultant certifies that it has not received compensation for participation in the preparation of the specifications for this solicitation.

14. consultant must answer the following questions:

*If an award is issued, do you plan to utilize a subcontractor or supplier for any portion of the contract? If consultant plans to utilize a subcontractor, the subcontractor will comply with the same terms as the consultant as contained in this solicitation and other relevant OAG policy and procedure and the subcontractor must be approved in advance by OAG.

*If yes, what percentage of the total award would be subcontracted or supplied by Historically Underutilized Businesses (HUBs)?

*If no, explain why no subcontracting opportunities are available or what efforts were made to subcontract part of this project.

*Is consultant certified as a Texas HUB?

PAYMENT

Payment for services will be made upon receipt of invoices presented to the OAG in the form and manner specified by the OAG after certification of acceptance of all deliverables.

PROPOSAL PREPARATION AND CONTRACTING EXPENSES

All proposals must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The proposal must contain the following completed items in the following sequence:

1. Transmittal Letter: A letter addressed to Ms. Julie Geeslin (address at the end of this Request for Proposal) that identifies the person or entity submitting the proposal and includes a commitment by that person or entity to provide the services required by the OAG. The letter must state, "The proposal enclosed is binding and valid at the discretion of the OAG." The letter must specifically identify the project for this proposal. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Proposal." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the proposal from further consideration at the OAG's discretion.

2. Executive Summary: A summary of the contents of the proposal, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the proposal.

3. Project Proposal

4. Cost Proposal

5. Relevant Technical Skill Statement (with references and vitae)

6. Relevant Experience Statement (with references and vitae)

To be considered responsive, a proposal must set forth full, accurate, and complete information as required by this request. A non-responsive proposal will not be considered for further evaluation. If the requirement that is not met is considered a minor irregularity or an inconsequential variation, an exception may be made at the discretion of the OAG and the proposal may be considered responsive.

A written request for withdrawal of a proposal is permitted any time prior to the submission deadline and must be received by Ms. Julie Geeslin (address at the end of this Request for Proposal). After the deadline, proposals will be considered firm and binding offers at the option of the OAG.

Preliminary and final negotiations with top-ranked prospective consultants may be held at the discretion of the OAG. The OAG may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective consultants submitting proposals pursuant to this request. During the negotiation process, the OAG and any prospective consultant(s) with whom the OAG chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of the OAG. Statements made by a prospective consultant in the proposal packet or in other appropriate written form will be binding unless specifically changed during final negotiations. A contract award may be made by the OAG without negotiations if the OAG determines that such an award is in the OAG's best interest.

All prospective consultants of record will be sent written notice of which, if any, prospective consultant(s) is selected for the contract award on or about February 16, 2007 or within ten (10) days of making an award, whichever is later.

All proposals are considered to be public information subsequent to an award of the contract. All information relating to proposals will be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents will be presumed to be public unless a specific exception in that Act applies. Prospective consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, proposals must specify the specific information which the prospective consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption which the prospective consultant believes protects that information must be cited. The OAG will assume that a proposal submitted to the OAG contains no proprietary or confidential information if the prospective consultant has not marked or otherwise identified such information in the proposal at the time of its submission to the OAG.

The OAG has sole discretion and the absolute right to reject any and all offers, terminate this Request for Proposal, or amend or delay this Request for Proposal. The OAG will not pay any cost incurred by a prospective consultant in the preparation of a response to this Request for Proposal, and such costs will not be included in the budget of the prospective consultant submitted pursuant to this Request for Proposal. The issuance of this Request for Proposal does not constitute a commitment by the OAG to award any contract. This Request for Proposal and any contract which may result from it are subject to appropriation of State and Federal funds, and the Request for Proposal and/or contract may be terminated at any time if such funds are not available.

The OAG reserves the right to accept or reject any or all proposals submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any proposal to the OAG. The OAG is under no legal obligation to enter into a contract with any offeror of any proposal on the basis of this request. The OAG intends any material provided in this Request for Proposal only and solely as a means of identifying the scope of services and qualifications sought.

The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Proposal. All expenses associated with the preparation of the proposal solicited by this Request for Proposal will remain the sole responsibility of the prospective consultant. Further, in the event that the prospective consultant is engaged to provide the services contemplated by this Request for Proposal, any expenses incurred by the prospective consultant associated with the negotiation and execution of the contract for the engagement will remain the obligation of the consultant.

Please address responses to:

Ms. Julie Geeslin

Budget and Purchasing Division

Office of the Attorney General of Texas

300 W. 15th Street, Third Floor

Austin, Texas 78701

Phone: (512) 475-4495

TRD-200606663
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: December 14, 2006

♦ ♦ ♦

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-7-10719. TBPC seeks a ten-year lease of approximately 5,047 square feet of office space in Cleburne, Johnson County, Texas.

The deadline for proposals is January 3, 2007 at 3:00 P.M. The award date is January 18, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily*at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=68332.

TRD-200606668

Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: December 14, 2006

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Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety (TxDPS) , announces the issuance of Request for Proposals (RFP) #303-7-10630. TBPC seeks a ten-year lease of approximately 2,286 square feet of office space in Jacksonville, Cherokee County, Texas.

The deadline for proposals is January 10, 2007 at 3:00 P.M. The award date is February 2, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=68433.

TRD-200606669
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: December 14, 2006

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Capital Area Rural Transportation System

Request for Qualifications Architectural/Engineering Service

The Capital Area Rural Transportation System (CARTS) is soliciting Statements of Qualification from architectural/engineering firms for the design and construction of an Intermodal Transit Facility in Georgetown, Texas. The Request for Qualifications, which sets forth further details, may be requested by submitting an e-mail with the subject line "RFQ GT Intermodal" to the following address: Dave@RideCARTS.com.

TRD-200606654
Dave Marsh
General Manager
Capital Area Rural Transportation System
Filed: December 13, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 8, 2006, through December 14, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 20, 2006. The public comment period for these projects will close at 5:00 p.m. on January 19, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Gemelos Investments LP; Location: The project is located on Copano Bay, at 5441 FM 1781, in Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 691790; Northing: 3111043. Project Description: The applicant proposes to recondition and improve an existing earthen T-head and construct two wooden T-head piers from the mainland nearby. Improvements include the removal of an existing bulkhead, construction of a new bulkhead, and stabilization of existing riprap. Improvements also include the construction of boat slips, a boat ramp, concrete drive, and covered picnic areas. The purpose of the project is to provide piers and boat facilities for a subdivision of private homes. The pier would be for private use only and will provide docking for homeowner's and their guests' boats. The T-head improvement project would require the removal of a wooden bulkhead that previously contained a 142- by 167-foot earthen T-head. The integrity of the existing wooden bulkhead has been compromised over the last several years and a portion of the land it once contained has washed away from behind it.

The applicant proposes to construct a new vinyl sheet-pile bulkhead along the existing MHW line shown on the attached project plans and place fill material behind the bulkhead. The T-head improvements include construction of a 4-foot-wide walkway that would extend out perpendicular from the southwest corner of the landmass. The walkway would extend out 16 feet in a southwesterly direction then turn due south and extend an additional 119-feet. At the end of, and perpendicular to, the 119-foot portion of the walkway, there would be a 4-by 64-foot walkway. Along the 119-foot section, the applicant proposes to construct six 3- by 30-foot finger piers spaced 23 feet apart, with pilings driven between them. The pier and walkway configuration would provide a total of twelve boat slips. The boat docking structures would be constructed over bay bottom consisting of sand and shell where very little seagrass is present and where water depths transition from -2.0 to -5.0 feet MHW. Other improvements include reworking and augmenting existing riprap along the T-head driveway; however the footprint of the riprap area would not change substantially. CCC Project No.: 07-0074-F1; Type of Application: U.S.A.C.E. permit application #23806(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200606787

Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 18, 2006

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Comptroller of Public Accounts

Notice of Contract Amendment

The Texas Treasury Safekeeping Trust Company (Trust Company) wishes to announce the amendment and renewal of the master custodial services contract with The Northern Trust Company, 50 South LaSalle Street, Chicago, Illinois 60675, for an additional four-year term. The contractor provides master custodian services for the assets held by the Trust Company.

The term of the original contract was September 1, 2002, through August 31, 2006. This renewal extends the term of the contract from September 1, 2006, through August 31, 2010.

The amount of the contract as renewed is estimated to be $165,123.87.

The notice of request for proposals (RFP #140c) was originally published in the May 10, 2002, issue of the *Texas Register* (27 TexReg 4199). The notice of award was published in the December 6, 2002, issue of *Texas Register* (27 TexReg 11638).

TRD-200606701
William Clay Harris
Assistant Deputy Comptroller, Contracts
Comptroller of Public Accounts
Filed: December 15, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of December 25, 2006 - December 31, 2006 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of December 25, 2006 - December 31, 2006 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of January 1, 2007 - January 31, 2007 is 8.25% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of January 1, 2007 - January 31, 2007 is 8.25% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200606800
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 18, 2006

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Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Sid Richardson Employees State Credit Union, Odessa, Texas to expand its field of membership. The proposal would permit employees of Southern Union Gas who work in Fort Worth, TX, Monahans, TX, Midland, TX, Barstow, TX, Coyanosa, TX, Kermit, TX, and Jal, NM, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200606839
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2006

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership -- Approved

North East Texas Credit Union, Lone Star, Texas -- See *Texas Register* Issue dated July 29, 2005.

First Service Credit Union, Houston, Texas -- See *Texas Register* Issue dated October 27, 2006.

Firstmark Credit Union, San Antonio, Texas -- See *Texas Register* Issue dated October 27, 2006.

Articles of Incorporation -- 50 Years to Perpetuity -- Approved

1st University Credit Union, Waco, Texas

DMC Credit Union, Arlington, Texas

Stewart Credit Union, Houston, Texas

TRD-200606840
Harold E. Feeney
Commissioner
Credit Union Department
Filed: December 20, 2006

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code

(the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 29, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 29, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Felipe Avila, Samuel Avila, and Sandra E. Tamez dba 1.50 Cleaners; DOCKET NUMBER: 2006-1027-DCL-E; IDENTIFIER: Regulated Entity Reference Numbers (RN) RN104085543, RN104094404, RN104085568, RN104085709, RN104980115, and RN104094453; LOCATION: Mission, McAllen, Palmview, and Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.11(e) and Texas Health & Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the remainder of the facilities; PENALTY: $5,334; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(2) COMPANY: Pauline Pham dba A-T Cleaners; DOCKET NUMBER: 2006-1708-DCL-E; IDENTIFIER: RN104964598; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Aly Mohammad, Inc. dba Dapper Dan Cleaners; DOCKET NUMBER: 2006-1200-DCL-E; IDENTIFIER: RN104964390, RN100707470, and RN104990007; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; PENALTY: $3,319; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: ANJUL, Inc. dba Le Grand Cleaners; DOCKET NUMBER: 2006-1560-DCL-E; IDENTIFIER: RN104950878; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Arfa & Shifa Business, Inc. dba Oaks Cleaners; DOCKET NUMBER: 2006-1623-DCL-E; IDENTIFIER: RN105015911; LOCATION: Liberty, Liberty County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Arkema Inc.; DOCKET NUMBER: 2006-1655-AIR-E; IDENTIFIER: RN100209444; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 22100, Special Condition Nos. 4 and 31B, 40 Code of Federal Regulations (CFR) §60.18(c), and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $2,575; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Azam Enterprises, Inc. dba Bluebonnet Cleaners; DOCKET NUMBER: 2006-1614-DCL-E; IDENTIFIER: RN104104294; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Terry L. Babb, Sr.; DOCKET NUMBER: 2006-2091-PWS-E; IDENTIFIER: RN105025811; LOCATION: Henderson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain the required public water supply occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: Juan Bermudez; DOCKET NUMBER: 2006-0965-MSW-E; IDENTIFIER: RN104904255; LOCATION: Houston and Humble, Harris County, Texas; TYPE OF FACILITY: solid waste; RULE VIOLATED: 30 TAC §30.5(a) and the Code, §37.003, by failing to obtain a license issued by the commission before engaging in an activity, occupation, or profession for which a license is required; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: John Nichols dba Best Cleaners; DOCKET NUMBER: 2006-0820-DCL-E; IDENTIFIER: RN103959417; LOCATION: Henderson, Rusk County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: Chun Son Birdsong dba Birdsong Cleaners; DOCKET NUMBER: 2006-1649-DCL-E; IDENTIFIER: RN105020176; LOCATION: Copperas Cove, Coryell County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: City of Buda Economic Development Corporation; DOCKET NUMBER: 2006-1721-WQ-E; IDENTIFIER: RN105023907; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities to water in the state; PENALTY: $1,600; Supplemental Environmental Project (SEP) offset amount of $1,280 applied to The Hill Country Conservancy-Wentzel Tract Project; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: James Kim dba Casey Ridge Grocery; DOCKET NUMBER: 2006-1761-PWS-E; IDENTIFIER: RN102225372; LOCATION: New Caney, Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A) and §290.46(n)(3), by failing to submit well completion data; and 30 TAC §290.39(h)(1) and §290.46(n)(1), by failing to submit plans and specifications for written approval prior to construction on a public water system and by failing to maintain engineering plans, maps, and make the records available to the executive director upon request; PENALTY: $220; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Champion Pet Foods, Inc.; DOCKET NUMBER: 2006-1635-AIR-E; IDENTIFIER: RN104603956; LOCATION: near Waco, McLennan County, Texas; TYPE OF FACILITY: pet food processing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent nuisance conditions; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Andy Chavez; DOCKET NUMBER: 2006-1823-LII-E; IDENTIFIER: RN105071377; LOCATION: Live Oak and San Antonio, Bexar County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4, Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigation license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: $625; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: Taekyu Kim dba Crescent Point Cleaner; DOCKET NUMBER: 2006-0935-DCL-E; IDENTIFIER: RN104094727; LOCATION: near Waxahachie, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Echo Bluff, Co. dba C S Fastrac Food Mart; DOCKET NUMBER: 2006-1045-PST-E; IDENTIFIER: RN101544765; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.242(3)(A), (G), and (L) and THSC, §382.085(b), by failing to maintain the Stage II Vapor Recovery System (VRS); and 30 TAC §115.222(1) and THSC, §382.085(b), by failing to have a submerged fuel drop tube, extending to within six inches of the tank bottom; PENALTY: $1,900; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: City of Ector; DOCKET NUMBER: 2005-0482-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10552-001, RN101920718; LOCATION: Ector, Fannin County, Texas; TYPE OF FACILITY: municipal wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10552-001, Effluent Limitations and Monitoring Requirements 1 and 3, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for five-day biochemical oxygen demand, total suspended solids, and pH; PENALTY: $4,680; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2006-1222-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and §101.20(3), Air Permit Number 4682B/PSD-TX-761M1, General Condition Number 8, and THSC, §382.085(b), by failing to comply with permitted emission limits; PENALTY: $9,750; Supplemental Environmental Project (SEP) offset amount of $3,900 applied to Beautify Corpus Christi Association-Cleanup of Illegal Dump Sites; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-1196-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 18287, Special Condition Numbers 1 and 36A, and THSC, §382.085(b), by failing to keep hydrogen sulfide blend gas concentrations three-hour average below 160 parts per million; PENALTY: $10,000; Supplement Environmental Project (SEP) offset amount of $5,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-1398-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 18287, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; PENALTY: $20,000; Supplemental Environmental Project (SEP) offset amount of $10,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-1519-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical com-

pany; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 3452, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $8,700; Supplement Environmental Project (SEP) offset amount of $3,480 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: City of Florence; DOCKET NUMBER: 2006-1545-MWD-E; IDENTIFIER: RN101920502; LOCATION: near Florence, Williamson County, Texas; TYPE OF FACILITY: domestic wastewater; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10944001, Effluent Limitations and Monitoring Requirements Number 1, Sludge Provisions, and the Code, §26.121(a), by failing to comply with permitted effluent limits and by failing to submit the annual sludge report; PENALTY: $8,700; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(24) COMPANY: Golden USA, LLC dba Legacy Dry Cleaners; DOCKET NUMBER: 2006-1562-DCL-E; IDENTIFIER: RN104995030; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Husaini, Inc. dba Memorial Village Cleaners and dba Prince Cleaners; DOCKET NUMBER: 2006-1297-DCL-E; IDENTIFIER: RN100915339, RN105019178, and RN104996160; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; PENALTY: $3,201; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Imperial Homes Texas, Ltd.; DOCKET NUMBER: 2006-1837-WQ-E; IDENTIFIER: RN105025308; LOCATION: near Houston, Harris County, Texas; TYPE OF FACILITY: home construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain a TPDES construction general permit TXR150000 for authorization to discharge storm water from home construction activities; PENALTY: $750; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: INVISTA S.a.r.l.; DOCKET NUMBER: 2006-1506-MLM-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: petrochemical manufacturing; RULE VIOLATED: 30 TAC §335.221(a)(13), 40 CFR §226.103(g) and §266.104(b)(1), and THSC, §382.085(b), by failing to maintain a properly functioning automatic waste feed cutoff when the carbon monoxide level exceeded 100 parts per million; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Sun Ok Ha dba J Cleaners; DOCKET NUMBER: 2006-1378-DCL-E; IDENTIFIER: RN103963831; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(29) COMPANY: Mohamad Omair dba Jrs Quick Stop; DOCKET NUMBER: 2006-2160-PST-E; IDENTIFIER: RN101550200; LOCATION: Plano, Parker County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(30) COMPANY: K. Hovnanian of Houston II, L.P. dba Brighton Homes; DOCKET NUMBER: 2006-1838-WQ-E; IDENTIFIER: RN105025936; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $750; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(31) COMPANY: Littlerado, Inc. dba One Hour Pronto Cleaners; DOCKET NUMBER: 2006-1454-DCL-E; IDENTIFIER: RN104094594; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(32) COMPANY: Mom Ratan Corporation, Inc. dba Plantation Food Store; DOCKET NUMBER: 2006-1742-PST-E; IDENTIFIER: RN102785052; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection; 30 TAC §334.8(c)(4)(A)(vii) and (5)(A)(i) and (B)(ii), and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate and by failing to renew a delivery certificate by timely and proper submission of a completed underground storage tank (UST) registration and self-certification form; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; and 30 TAC §334.10(b), by failing to have the UST records maintained, readily accessible, and available for the inspection; PENALTY: $5,400; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Lisa Cypert dba Munday Cleaners; DOCKET NUMBER: 2006-1153-DCL-E; IDENTIFIER: RN105025407; LOCATION: Munday, Knox County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(34) COMPANY: Naail Enterprises, Inc. dba Super Cleaners 1 and dba Super Cleaners 2; DOCKET NUMBER: 2006-1641-DCL-E;

IDENTIFIER: RN103955944 and RN103955936; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: dry cleaning and/or dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration forms for the facilities; PENALTY: $1,778; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(35) COMPANY: Nalika, Inc. dba Dry Clean Super Center; DOCKET NUMBER: 2006-1583-DCL-E; IDENTIFIER: RN104152541; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew its registration by completing and submitting the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(36) COMPANY: Marie Braden dba Nana's Kitchen; DOCKET NUMBER: 2006-1116-PWS-E; IDENTIFIER: RN101283109; LOCATION: near Tow, Llano County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i), (c)(2)(F), and (c)(3)(A)(ii), and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring, by failing to provide public notice for monitoring violations, by failing to collect at least five distribution samples following a total coliform-positive sample, by failing to provide public notice for failure to collect and submit the appropriate number of distribution samples, and by failing to collect at least four repeat samples following each total coliform-positive sample found; PENALTY: $1,905; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(37) COMPANY: North Texas Super Save LP; DOCKET NUMBER: 2006-2089-PST-E; IDENTIFIER: RN102245859; LOCATION: Justin, Denton County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Northeast Service, Inc. dba Horton Tree Service; DOCKET NUMBER: 2006-1305-MLM-E; IDENTIFIER: RN101463990; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.7(a), by failing to obtain proper TCEQ authorization to operate as a landfill facility; and 30 TAC §111.201 and THSC, §382.085(b), by failing to obtain proper TCEQ authorization prior to the commencement of outdoor burning activities; PENALTY: $5,500; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Patec Enterprise, Inc. dba Prestonwood Cleaners; DOCKET NUMBER: 2006-1608-DCL-E; IDENTIFIER: RN104019310; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner fees; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(40) COMPANY: Payne Homes, Inc.; DOCKET NUMBER: 2006-0968-WQ-E; IDENTIFIER: RN104938436; LOCATION: Midland, Midland County, Texas; TYPE OF FACILITY: construction sites for custom homes; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(a), and TPDES General Permit Number TXR15AU86 Part II Section D3(a) and Part III Section D1, by failing to adequately implement storm water best management practices; PENALTY: $900; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(41) COMPANY: Plains Pipeline, L.P.; DOCKET NUMBER: 2006-1551-AIR-E; IDENTIFIER: RN101973782; LOCATION: McCamey, Upton County, Texas; TYPE OF FACILITY: tank farm; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit (FOP) Number O-1183, and THSC, §382.085(b), by failing to certify compliance with the terms and conditions of FOP Number O-1183; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(42) COMPANY: Ponderosa Pine Energy Partners, Ltd.; DOCKET NUMBER: 2006-1717-AIR-E; IDENTIFIER: RN100223312; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: power generation and transmission; RULE VIOLATED: 30 TAC §122.146(2), FOP Number 0-00543, General Terms and Conditions, and THSC, §382.085(b), by failing to certify compliance; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(43) COMPANY: Preston Tiptop Cleaners, Inc. dba Hackberry Cleaners II; DOCKET NUMBER: 2006-1009-DCL-E; IDENTIFIER: RN104957949; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $889; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(44) COMPANY: River Chase Subdivision II, Ltd.; DOCKET NUMBER: 2005-1698-EAQ-E; IDENTIFIER: RN102791662; LOCATION: Georgetown, Williamson County, Texas; TYPE OF FACILITY: tract of land; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to receive commission approval of a water pollution abatement plan; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(45) COMPANY: Maria Rosales; DOCKET NUMBER: 2006-1531-WQ-E; IDENTIFIER: RN104995956; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(46) COMPANY: City of Springtown; DOCKET NUMBER: 2006-1219-PWS-E; IDENTIFIER: RN101392397; LOCATION: Springtown, Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level for total trihalomethanes; PENALTY: $745; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(47) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2006-1507-MWD-E; IDENTIFIER: RN102314465; LOCATION: Trinity, Houston County, Texas; TYPE OF FACILITY: municipal wastewater system; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11181001, Final Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limits; PENALTY: $5,130; Supplemental Environmental Project (SEP) offset amount of $4,104 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(48) COMPANY: Tony Lama Company; DOCKET NUMBER: 2006-1715-AIR-E; IDENTIFIER: RN100217710; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: boot manufacturing plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a completed permit compliance certification for FOP Number O-01755; PENALTY: $2,375; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(49) COMPANY: Wharton County Power Partners, L.P.; DOCKET NUMBER: 2006-1779-AIR-E; IDENTIFIER: RN101527943; LOCATION: Wharton County, Texas; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200606814

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: December 19, 2006

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 29, 2007**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 29, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Donald Savage dba Redi-Strip; DOCKET NUMBER: 2005-0913-IHW-E; TCEQ ID NUMBER: RN100566280; LOCATION: 6070 Van Hise Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: former auto body paint stripping facility; RULES VIOLATED: 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct a hazardous waste determination and waste classification; 30 TAC §335.4 and Texas Water Code (TWC), §26.121, by failing to prevent discharge of pollutants to concrete and soil; and 30 TAC §335.69(b), by failing to limit storage of hazardous waste to the applicable accumulation time; PENALTY: $31,500; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Elvi Lorena Hilton dba Mockingbird Cleaners; DOCKET NUMBER: 2006-0998-DCL-E; TCEQ ID NUMBER: RN104992896; LOCATION: 5555 East Mockingbird Lane, Suite 100, Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Hardin Food Mart Inc.; DOCKET NUMBER: 2005-0505-PST-E; TCEQ ID NUMBER: RN103046363; LOCATION: 4645 United States Highway 95 North, Silsbee, Hardin County, Texas; TYPE OF FACILITY: gasoline station; RULES VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to have an operable emergency shut-off valve (shear valve) which includes a means of providing a positive shut-off of product in the event of a collision involving a dispenser; 30 TAC §115.242(3)(C)(i), (ii) and (iii) and, THSC, §382.085(b), by failing to ensure that nozzle boots are not torn or damaged in a way that could reduce the efficiency of the vapor recovery system; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain and produce all current Stage II records; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that each current and future employee is made aware of the purpose and correct operation of the Stage II equipment; PENALTY: $9,450; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Horace Findley dba Bosque Brazos Valley Water Systems, Inc.; DOCKET NUMBER: 2005-0075-PWS-E; TCEQ ID NUMBER: RN101215275; LOCATION: Farm-to-Market Road 2114 and Bosque County Road 3635, Whitney, Bosque County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED:

30 TAC §290.46(e)(3)(A), by failing to operate the public water system under the direct supervision of a water works operator who holds an applicable, valid license issued by the executive director; 30 TAC §290.45(f)(4), by failing to ensure that the contracted water purchase rate was at least 0.6 gallons per minute per connection; 30 TAC §290.46(f), by failing to maintain Monthly Operation Reports and make them accessible for review during inspection; 30 TAC §290.109(c)(2)(A)(ii) and THSC, §341.033(d), by failing to perform routine monthly bacteriological sampling of the public water system for the months of March, April, and August 2003, February, May, June, and July - December 2005, and January - March 2006; 30 TAC §290.122(c)(2)(A), by failing to provide public notice of the failure to conduct monthly bacteriological sampling for the months of March, April, and August 2003, February, May, June, and July - December 2005, and January - March 2006; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay outstanding Public Health Service fees and associated late fees for TCEQ Account No. 90180009 for Fiscal Years 2005 and 2006; PENALTY: $7,921; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Javed Iqbal dba Ledbetter Chevron; DOCKET NUMBER: 2005-0042-PST-E; TCEQ ID NUMBER: RN102281953; LOCATION: 2344 West Ledbetter Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: gasoline station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account No. 0051645U; PENALTY: $3,270; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Kenneth Hart dba 1.99 Dry Cleaners; DOCKET NUMBER: 2006-0791-DCL-E; TCEQ ID NUMBERS: RN104247598; LOCATION: 4720 West Sublett Road, Suite 100, Arlington, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.11(e), and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Mohammad Salman dba Shop N Save; DOCKET NUMBER: 2004-1805-PST-E; TCEQ ID NUMBER: RN101651263; LOCATION: 15395 Farm-to-Market Road 3083, Conroe, Montgomery County, Texas; TYPE OF FACILITY: gasoline station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Account No. 0059422U for the Fiscal Year 2005 and associated late fees and interest; PENALTY: $4,200; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200606816

Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 29, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 29, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Aliahsan Nadia Enterprises, Inc. dba Diadem Food Mart; DOCKET NUMBER: 2006-0061-PST-E; TCEQ ID NUMBERS: 48994 and RN102014404; LOCATION: 3911 Diadem Lane, Kirby, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and §334.50(b)(2) and Texas Water Code (TWC), §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to monitor the piping associated with the UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.10(b), by failing to maintain all UST records at the facility and make them available for inspection to commission personnel upon request; and 30 TAC §334.7(d)(3), by failing to amend the registration within 30 days of any change to reflect the current status of the UST system; PENALTY: $3,780; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AMK Enterprises, LLC dba The Old Tymer; DOCKET NUMBER: 2006-0381-PWS-E; TCEQ ID NUMBER: RN102404399; LOCATION: 28295 Interstate Highway 10 West, Boerne, Bexar County; Texas; TYPE OF FACILITY: public water

supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis and by failing to provide the public notice of the violations; and 30 TAC §290.51(a)(3); and TWC, §5.702, by failing to pay past due public health service fees for Account No. 90150363; PENALTY: $2,640; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Dinh Ly Chia and Sung Kung Chia dba Billy Mart; DOCKET NUMBER: 2006-0897-PST-E; TCEQ ID NUMBER: RN101820017; LOCATION: 2205 West Highway 82, Clarksville, Red River County, Texas; TYPE OF FACILITY: gasoline station; RULES VIOLATED: 30 TAC §334.80(a), by failing to perform an adequate site assessment to determine the full extent and location of soils contaminated by a release, the presence and concentrations of dissolved regulated substance contamination in the groundwater, and the risk associated with a release; PENALTY: $5,000; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Hall Grapevine Corporation dba Hall Johnson Chevron; DOCKET NUMBER: 2004-1181-PST-E; TCEQ ID NUMBER: RN101570794; LOCATION: 2100 Hall Johnson Road, Grapevine, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of two petroleum USTs; PENALTY: $2,740; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Lonestar Aquafarms, Ltd.; DOCKET NUMBER: 2005-1063-IWD-E; TCEQ ID NUMBER: RN102344074; LOCATION: at the intersection of County Road 479 and 477, approximately one-half mile from the community of Carancahua, Jackson County, Texas; TYPE OF FACILITY: wastewater treatment facility for the aquaculture facility; RULES VIOLATED: 30 TAC §305.125(1); Texas Pollutant Discharge Elimination System Permit No. 04287, Effluent Limitations and Monitoring Requirements No. 1; and TWC, §26.121(a), by failing to comply with the permitted effluent limitations for total suspended solids, inorganic suspended solids, and five-day carbonaceous biochemical oxygen demand; PENALTY: $3,048; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Price Construction Ltd; DOCKET NUMBER: 2005-0295-AIR-E; TCEQ ID NUMBER: RN102743747; LOCATION: one mile east of University Avenue on North Loop 289, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: mobile hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a)(2)(A) and THSC, §382.085(b), by failing to submit registration for the installation of a pollution control device; and 30 TAC §116.115(c); THSC, §382.085(b); and New Source Review (NSR) Air Permit No. 7901, Special Condition 3, by failing to use only the fuel specified by NSR Air Permit No. 7901; PENALTY: $5,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(7) COMPANY: Rama Rao Mugili dba Oak Island Ice House; DOCKET NUMBER: 2004-1284-PST-E; TCEQ ID NUMBERS: 46039 and RN101197309; LOCATION: 2750 South Loop 1604 West, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum USTs; PENALTY: $800; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Sang Hill dba Chaus Drop Off & Dry Cleaners; DOCKET NUMBER: 2006-0933-DCL-E; TCEQ ID NUMBER: RN103954962; LOCATION: 3403 Ranch Road 1869, Liberty Hill, Williamson County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,067; STAFF ATTORNEY: Mary Hammer, Litigation Division MC 175, (512) 239-2496; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2005-0257-AIR-E; TCEQ ID NUMBERS: HG0562P and RN100219526; LOCATION: 8600 Park Place Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §106.532 and THSC, §382.085(b), by failing to prevent the unauthorized emission of 1,366 lbs of butane, 2,053 lbs of butylene isomers, 1,518 lbs of isobutylene, 5 lbs of methanol, 6 lbs of methyl tert-butyl ether, 12 lbs of pentane, and 12 lbs of propane to the atmosphere from the central gland water system during an avoidable emissions event on August 18, 2004; 30 TAC §§101.20(1) and (2), 115.352(4), and 116.115(c), 40 Code of Federal Regulations (CFR) parts 60.482-6(a)(1) and 63.167(a)(1), Air Permit No. 22052, Special Conditions 2 and 3.E, and THSC, §382.085(b), by failing to equip an open-ended valve with a second valve, cap, blind flange, or plug; 30 TAC §116.115(c), Air Permit No. 22052, Special Condition 3.E., and THSC, §382.085(b), by failing to ensure that there were no screwed connections on lines greater than two inches in diameter; 30 TAC §115.782(b)(2) and §115.352(2), 40 CFR part 63.168(f)(2), and THSC, §382.085(b), by failing to make the first attempt to repair 29 components within five days after discovering a leak; 30 TAC §115.782(b)(2) and §115.352(1)(A), 40 CFR parts 60.482-7(d)(1) and 63.168(f)(1), THSC, §382.085(b), by failing to repair 97 components within 15 days after discovering a leak; 30 TAC §115.782(b)(1), and §115.352(2), 40 CFR part 63.168(f)(2), and THSC, §382.085(b), by failing to make the first attempt to repair 18 connections within one day after discovering a leak; 30 TAC §115.782(b)(1) and §115.352(1)(A), 40 CFR part 63.168(f)(1), and THSC, §382.085(b), by failing to repair 55 components within seven days after discovering a leak; 30 TAC §§101.20(1), 115.352(4), 115.783(5), 116.814(a), and 122.143(4), 40 CFR part 60.482-6(a)(2), Air Permit No. 46307, Special Condition No. 12.E., Air Permit No. O-01598, Special Condition No. 1.E.(v), and THSC, §382.085(b), by failing to seal three open-ended valves with a second valve, cap, blind flange, or plug; 30 TAC §§101.20(1) and (2), 115.352(4), 115.783(5), 116.115(b), 116.814(a), and 122.143(4), 40 CFR parts 60.482-6(a)(1) and 63.167(a)(1), Air Permit No. 46307, Special Condition No. 12.E., Air Permit No. O-01598, Special Condition No. 1.E.(v), Air Permit No. 19806, General Provision 7.E., and THSC, §382.085(b), by failing to equip five open-ended valves with a second valve, cap, blind flange,

or plug; 30 TAC §116.110(a) and §116.116(a), Air Permit No. 46307, Special Condition No. 1 and Maximum Allowable Emission Rates Table, and THSC, §382.085(b), by failing to obtain authorization for the emissions from the oily water sewer hubs which lead to the API separator; 30 TAC §115.212(a)(3)(B) and §122.143(4), Air Permit No. O-01598, Special Condition 7.B.(i), and THSC, §382.085(b), by failing to ensure a leak-free connection while loading and/or unloading volatile organic compounds (VOCs) into rail car transport vessels; 30 TAC §116.115(c), Air Permit No. 46307, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event that occurred on July 23, 2005; 30 TAC §101.201(a)(2)(D) and (H) and §101.201(b)(8), and THSC, §382.085(b), by failing to properly notify the TCEQ of an emissions event that occurred on July 23, 2005; and 30 TAC §116.115(c), TCEQ Air Permit No. 46307, Special Condition No. 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions of 1,290 lbs of VOCs; PENALTY: $157,959; Supplemental Environmental Project offset amount of $78,979 applied to Harris County Public Health and Environmental Services - Pollution Control Division Fourier Transform Infra Red Project; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 422-8916.

TRD-200606815
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2006

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 29, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 29, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Pak Convenience Store, Inc. dba One Stop Number 15; DOCKET NUMBER: 2005-1154-PST-E; TCEQ ID NUMBER: RN102402179; LOCATION: 8460 Denton Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor the underground storage tank (UST) system at a frequency of at least once every month (not to exceed 35 days between each monitoring) in a manner which would detect a release; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued delivery certificate, and by failing to make immediately available upon request by TCEQ staff a current TCEQ delivery certificate for the USTs at the facility; 30 TAC §334.10(b), by failing to maintain on the premises of the facility all required records, and by failing to make those records immediately available for inspection upon request by TCEQ personnel; and 30 TAC §334.22(a), and Texas Water Code, §5.702, by failing to pay, at the time and in the manner required, outstanding annual facility fees for TCEQ Account No. 0052830U for Fiscal Year 2006; PENALTY: $6,222; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200606817
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: December 19, 2006

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Notice of Public Hearings on Proposed Revisions to 30 TAC Chapters 114, 115, and 117, and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct hearings to receive testimony regarding proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, Chapter 115, Control of Air Pollution from Volatile Organic Compounds, and Chapter 117, Control of Air Pollution from Nitrogen Compounds and corresponding revisions to the state implementation plan (SIP). The United States Environmental Protection Agency's (EPA's) Final Rule to Implement the Eight-Hour Ozone National Ambient Air Quality Standard was published on November 29, 2005. Under Federal Clean Air Act (FCAA), 42 United States Code, §§7410, *et seq.*, Texas is required to submit SIP revisions by June 15, 2007, for demonstrating attainment with the eight-hour ozone national ambient air quality standard. In addition, the revisions proposed to Chapter 117 implement the legislative mandate under House Bill (HB) 965, 79th Legislature,

2005, which adds Texas Health and Safety Code §382.0275, concerning Commission Action Relating to Residential Water Heaters, which requires certain actions of the commission regarding residential water heaters.

The commission proposes to amend Chapter 114 to include marine distillate fuels commonly known as Marine Distillate fuel X (DMX), Marine Distillate fuel A (DMA), and Marine Gas Oil (MGO), into the definition of diesel fuels, requiring them to be Texas Low Emission Diesel (TxLED) compliant in the Houston-Galveston-Brazoria (HGB) nonattainment area. The proposed rulemaking also adds a compliance schedule for the introduction of the TxLED-compliant marine distillate fuels in the HGB nonattainment area. **(Rule Project Number 2006-036-114-EN)**

The proposed amendments to Chapter 115 would require owners or operators in the HGB eight-hour ozone nonattainment area to reduce emissions of volatile organic compounds (VOC) from VOC storage and degassing operations by establishing more stringent controls for fittings on floating roof storage vessels, establishing control requirements or operational limitations on landing floating roofs, establishing control requirements for flash emissions from crude oil and condensate storage tanks, and establishing more stringent control requirements for degassing and cleaning of storage, transport, and marine vessels. **(Rule Project Number 2006-038-115-EN)**

The commission is proposing to repeal Chapter 117 in its entirety and proposing a new reformatted Chapter 117. This proposed repeal and reformatting of Chapter 117 is necessary to accommodate new proposed rules for the Dallas-Fort Worth eight-hour ozone attainment demonstration and to provide for future potential rulemaking, as well as improve organization of existing requirements. The proposed rulemaking for the Dallas-Fort Worth eight-hour ozone attainment demonstration would subject owners or operators of stationary sources of nitrogen oxides (NO_x) in the Dallas-Fort Worth eight-hour ozone nonattainment area, as well as in specified counties in the northeast Texas area, to more stringent emission control, monitoring, testing, recordkeeping, and reporting requirements. **(Rule Project Number 2006-034-117-EN)**

The proposed Dallas-Fort Worth attainment demonstration SIP revision demonstrates attainment of the eight-hour ozone standard using photochemical modeling and weight-of-evidence and includes several concurrently proposed Chapter 117 rules, as well as local-level control commitments by the North Central Texas Council of Governments. The attainment demonstration also includes 1999 base case and 2009 future case modeling and is supported by additional technical work that shows decreasing NO_x and VOC trends as a result of the control strategies implemented under the one-hour ozone standard. This proposed revision also includes a motor vehicle emissions budget, VOC and NO_x reasonably available control technology analyses, reasonably available control measures analysis, contingency measures, and emissions inventories. **(Rule Project Number 2006-013-SIP-NR)**

The proposed Dallas-Fort Worth Eight-Hour Ozone Nonattainment Area Reasonable Further Progress (RFP) SIP revision demonstrates that the RFP 15% reduction requirement will be met for the analysis period of 2002 to 2008. This revision also includes a motor vehicle emissions budget (MVEB) for the milestone year 2008 that was developed using MOBILE6, the latest EPA emission factor model. **(Rule Project Number 2006-031-SIP-NR)**

The proposed Houston-Galveston-Brazoria nonattainment area SIP revision documents the progress made to attain the one-hour ozone standard, documents steps toward attainment of the eight-hour ozone standard, and estimates 2018 as a reasonable target year for attainment of the eight-hour ozone standard in the HGB nonattainment area. The proposed revision describes the two concurrently proposed rules in Chapter 114 and Chapter 115. In addition, the SIP revision includes local-level NO_x control commitments by the Houston-Galveston Area Council to be in place by 2009. This revision also includes 2000 base case modeling, 2009 future case modeling, VOC and NO_x reasonably available control technology analyses, reasonably available control measures analysis, contingency measures, and the 2002 Houston-Galveston-Brazoria periodic emissions inventory. **(Rule Project Number 2006-027-SIP-NR)**

The proposed Houston-Galveston-Brazoria Eight-Hour Ozone Nonattainment Area Reasonable Further Progress (RFP) SIP revision demonstrates that the RFP 15% reduction requirement will be met for the analysis period of 2002 to 2008. This revision also includes a revised motor vehicle emissions budget (MVEB) for the milestone year 2008 that is updated using the latest EPA MOBILE6 inventory development tool. **(Rule Project Number 2006-030-SIP-NR)**

Public hearings on these proposals will be held at the following times and locations: January 29, 2007, 2:00 p.m. and 6:00 p.m., Houston-Galveston Area Council, 3555 Timmons Lane, Houston; January 31, 2007, 7:00 p.m., J. Erik Jonsson Central Library Auditorium, 1515 Young Street, Dallas; February 1, 2007, 2:00 p.m., Arlington City Hall Council Chambers, 101 W. Abrams Street, Arlington; February 1, 2007, 6:00 p.m., Midlothian Conference Center, 1 Community Circle, Midlothian; February 6, 2007, 2:00 p.m., Longview Public Library, 222 W. Cotton Street, Longview; and February 8, 2007, 2:00 p.m., Texas Commission on Environmental Quality, Building E, Room 201S, 12100 Park 35 Circle, Austin. The hearings will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearings. Individuals may present oral statements when called upon in order of registration. A time limit may be established at each hearing to assure that enough time is allowed for every interested person to speak. There will be no open discussion during the hearings; however, commission staff members will be available to discuss the proposals 30 minutes before the hearings.

Persons planning to attend the hearings, who have special communication or other accommodation needs, should contact Jennifer Stifflemire, Air Quality Division (512) 239-0573. Requests should be made as far in advance as possible.

Comments may be submitted to Joyce Spencer, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512) 239-4808. **All comments should reference the rule or SIP project numbers that they pertain to.** Electronic comments may be submitted at *http://www.5.tceq.state.tx.us.rules/ecomments.* The comment period closes February 12, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* Additional information is available on the commission's DFW Web site at *http://www.tceq.state.tx.us/implementation/air/sip/dfw.html* and the HGB Web site at *http://www.tceq.state.tx.us/implementation/air/sip/hgb.html.* For further information, please contact Ray Schubert, Air Quality Division, at (512) 239-6615.

TRD-200606702
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: December 15, 2006

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission will conduct a public hearing to receive public comment on the proposed Medicaid payment rate for Case Management for the Blind Children's Vocational Discovery and Development Program (BCVDDP). This program is operated by the Texas Department of Assistive and Rehabilitative Services (DARS). The public hearing will be held on January 17, 2007, at 1:30 p.m. in the Big Bend Conference Room, Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd., Austin, Texas 78758. The hearing will be held in compliance with 1 TAC §355.105(g), which requires public hearings on proposed Medicaid reimbursements. Persons requiring ADA accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rate calculation is based on audited financial and statistical data reported by DARS BCVDDP for its 2006 fiscal year. The proposed payment rate will be effective January 1, 2007.

Methodology and justification. The proposed payment rate was developed pursuant to the reimbursement methodology rules, 1 Texas Administrative Code (TAC) §355.8381 (relating to Reimbursement Rates for Case Management).

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Briefing Package. A briefing package describing the proposed payment rate will be available on or after December 29, 2006. Interested parties may obtain a copy of the briefing package prior to the hearing by calling Irene Cantu at (512) 491-1358. The briefing package also will be available at the public hearing.

TRD-200606846
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: December 20, 2006

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Department of State Health Services

Notice of Public Hearing Concerning Proposed Hospital Licensing Rules

The Department of State Health Services, Health Care Quality Section/Facility Licensing Group, will hold a public hearing to take comments concerning proposed hospital licensing rules. These rules were published in the December 15, 2006, issue of the *Texas Register* (31 TexReg 9961).

The hearing will be held on Wednesday, January 10, 2007, from 10:00 a.m. to 11:00 a.m., at the Department of State Health Services, Central Campus Main Building, Room K-100, 1100 West 49th Street, Austin, Texas.

Further information may be obtained from Nance Stearman, Health Care Quality Section, (512) 834-6752.

TRD-200606843
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 20, 2006

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Texas Higher Education Coordinating Board

Request for Proposals for Comprehensive Classification and Compensation Study

Texas Higher Education Coordinating Board is soliciting proposals from interested, highly qualified, and experienced consulting firms to design, conduct, and assist in the implementation of a comprehensive classification and compensation study of the agency's positions staffed by full-time and part-time employees. A Request for Proposals (RFP), which includes instructions for its completion, is available upon request at the e-mail address below.

Respondents to this RFP shall submit completed proposals in a sealed envelope, clearly marked with "Proposal for THECB Classification and Compensation Study" and the name of the bidder.

Seven (7) copies of the proposal must be submitted by 5:00 p.m. on January 12, 2007 to the following address:

Texas Higher Education Coordinating Board

ATTN: Anthony O. Tegbe

1200 East Anderson Lane, Room 2.177

Austin, TX 78752

If you have any questions about the RFP, please submit your inquiries in writing, preferably via e-mail to:

Betty Sharp

Director of Personnel

Texas Higher Education Coordinating Board

1200 East Anderson Lane

Austin, TX 78752

E-mail: betty.sharp@thecb.state.tx.us

TRD-200606827
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: December 19, 2006

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Texas Department of Housing and Community Affairs

Notice of Funding Availability (NOFA) Community Housing Development Organization Housing Development

HOME Investment Partnerships Program

(1) Summary

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $6,000,000 in federal funding from the HOME Investment Partnership Program (HOME) for Community Housing Development Organizations (CHDOs) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10, Texas Administrative Code (10 TAC), Chapter

53 ("HOME Rules") in effect at the time the NOFA is released, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code.

(2) Allocation of HOME CHDO Funds

(a) CHDO funding is made available as a set-aside from the annual federal allocation of HOME funds to the Department. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

(b) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

(c) Pursuant to §2306.111(d) of the Texas Government Code, funding will be awarded on a competitive basis to all urban/exurban areas and rural areas (sub-regions) of each uniform state service region based on the regional allocation formula developed by the Department. If the Department determines under the formula that an insufficient number of eligible Applications have been submitted from a particular uniform state service region, the Department shall use the unused funds allocated to that region for all urban/exurban areas and rural areas in other uniform state service regions based on identified need and financial feasibility. Any available fund balances not requested in response to this NOFA by the March 1, 2007 deadline will be made available though a subsequent open application NOFA to be released in April 2007. The availability of funds to each state service region and sub-region is listed in Table 1.

Table 1. HOME CHDO Regional Allocation, by region and sub-region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/ Exurban Funding Amount	Urban/ Exurban Funding %
1	Lubbock	$384,153	6%	$384,095	100%	$59	0%
2	Abilene	$267,853	5%	$260,662	98%	$7,192	2%
3	Dallas/Fort Worth	$958,725	18%	$323,955	28%	$634,770	72%
4	Tyler	$753,756	12%	$664,174	88%	$89,582	12%
5	Beaumont	$356,634	6%	$313,512	85%	$43,122	15%
6	Houston	$427,329	7%	$189,373	45%	$237,956	55%
7	Austin/Round Rock	$255,674	4%	$137,179	55%	$118,495	45%
8	Waco	$210,703	3%	$129,224	62%	$81,479	38%
9	San Antonio	$336,149	6%	$257,048	78%	$79,101	22%
10	Corpus Christi	$461,147	7%	$310,225	82%	$150,922	18%
11	Brownsville/Harlingen	$1,119,786	18%	$665,684	66%	$454,102	34%
12	San Angelo	$339,780	5%	$131,636	38%	$208,144	62%
13	El Paso	$128,309	3%	$85,887	64%	$42,422	36%
	Total	**$6,000,000**	**100%**	**$3,852,655**	**64%**	**$2,147,345**	**36%**

Note: Funds are limited only to Developments located outside of local HOME Participating Jurisdictions.

(d) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.54(2). Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The Maximum award may not exceed 90% of the total development costs. The remaining 10% of total development costs must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD.

(e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(f) Funds will be awarded in accordance with the rules and procedures as set forth in the State of Texas HOME Program rules at 10 TAC §§53.50 - 53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development, determine to award HOME funds as either a loan or as a grant. Loans cannot exceed amortization of more than 40 years.

(g) Each CHDO that is awarded Rental Development funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits, and other materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000. Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receiving no more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award for CHDO Operating Expenses. The total amount of CHDO operating grants for fiscal year 2007 awarded by the Department may not exceed $300,000.

(3) Eligible and Ineligible Activities

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.53(g) and §55.55, which involve only the acquisition, rehabilitation, and construction of affordable rental developments.

(b) Prohibited activities include those under federal HOME rules at 24 CFR 92.214 and 10 TAC§53.56.

(c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

(d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

(4) Eligible and Ineligible Applicants

(a) The Department provides HOME CHDO funding from the federal government to qualified nonprofit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.63, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process; however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

(b) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300 of the federal HOME rule.

(c) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule, clarification for §53.53(b)(6) creates ineligibility with any requirements under 10 TAC 49.5(a) of this title excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(5) Affordability Requirements

(a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. At a minimum, at least 20% of HOME assisted units should be affordable to persons earning 50% or less than of the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

(b) Each development will have a two-tier affordability term.

(i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

(ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

(c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(6) Match Requirements Applicants will be required to submit documentation on all financial resources to be used in the Development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and will be provided with the appropriate forms and instructions on how to report eligible match.

(7) Site and Development Restrictions:

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(c) Housing must meet the accessibility requirements at 24 CFR part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601- 3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), §49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

(d) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating juris-

dictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.

(e) All of the 2007 Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g), and (h)/

(f) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.53(f).

(8) Threshold Criteria

(a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37 of this title, pursuant to 10 TAC 53.53(i).

(c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

(d) Pursuant to 10 TAC §53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

(i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

(ii) all neighborhood organizations whose defined boundaries include the location of the Development;

(iii) executive officer and Board President of the school district that covers the location of the Development;

(iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

(v) the State Representative and State Senator whose district covers the location of the Development.

(vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

(e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.53(k).

(ii) All contractors, consulting firms, and Administrators must sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to §53.53(l).

(iii) all of 2007 Qualified Allocation Plan and Rules at 10 TAC §49.9(h), excluding subsections (4)(I), (11), (12) and (15).

(9) Selection Process

(a) Distribution. Awards will be made based on competitive scoring in each region by urban/exurban and rural designations. Awards will be made in each urban/exurban area and rural area (sub-region) until all funds are allocated in that sub-region. If the Department determines under the formula that an insufficient number of eligible Applications have been submitted for a particular uniform state service region, the Department shall use the unused funds allocated to that region for all urban/exurban areas and rural areas in other uniform state service regions based on identified need and financial feasibility.

(b) Scoring Criteria. Applicants may receive up to 156 points based on the scoring criteria listed below, and must obtain a minimum score of 70 points to be considered for award. Evidence of these items must be submitted in accordance with the 2007 Final Application Submission Procedures Manual (ASPM), effective as of the date of issuance of this NOFA. Applicants must also select each item as part of their self score to receive points. The scoring criteria to be used are:

(i) HOME Applications Not Layered with Competitive Tax Credits: Applicants whose financial proposals do not include financing through the Department's 9% Competitive Housing Tax Credit Program will receive 30 points.

(ii) Leveraging of Public and Private Financing: To encourage the involvement of other public agencies and private entities in affordable housing, Applicants will receive 20 points if their HOME request represents less than 50% of the total development costs, or will receive 10 points if their HOME request represents less than 75% of the total development costs. Applications requesting 75% or more of the total development costs though a HOME award will receive no points. Applicants may use the estimated equity value of Housing Tax Credits in the calculation of leveraged financing.

(iii) Minimum HOME Subsidy: To maximize the impact that HOME funds have in developing affordable rental housing, Applicants will receive 20 points for HOME funding requests that do not exceed $20,000 in HOME funds per unit, or will receive 10 points for HOME funding requests that do not exceed $40,000 in HOME funds per unit. Home requests of $40,000 per unit or more will receive no points.

(iv) Extremely Low-Income Targeting. To encourage the inclusion of families and individuals with the highest need for affordable housing, Applicants will receive 10 points for proposed developments that provide at least 5% of units to families or individuals earning 30% or less of the area medium income for the Development site. Applicants will receive 20 points for proposed developments that provide at least 10% of units to families or individuals earning 30% or less of the area medium income for the Development site. The maximum number of points for this item is 20. Rents for these units targeting families or individuals earning 30% or less of the area medium income may not exceed the

Department's 30% rent limits for the Housing Trust Fund and Housing Tax Credit program.

(v) Matching Funds: To ensure that the Department continues to meet its federal obligation to provide matching funds under the HOME program, Applicants will receive 15 points for having at least 10% of their total development costs covered by eligible HOME matching financing, or will receive 10 points for having at least 5% of their total development costs covered by eligible HOME matching financing, as outlined in the application materials. Applicants with less than 5% of their total development costs covered by match financing will receive no points.

(vi) Location of Development: To encourage the creation of rental housing in communities where affordable units may not already exist, Applicants will receive 10 points for Developments that are located in Cities or Places that have no other affordable rental developments that have received funding from the Department.

(vii) Cost-Effectiveness of a Proposed Development: To encourage reasonable and cost effective building strategies, Applicants will receive 10 points for Developments that do not exceed $70 per square foot for new construction and $38 per square foot for rehabilitation. This figure will be calculated by dividing the total residential development costs by the total development square footage (included common areas). These numbers are the targets the Department currently uses for its Performance Measures.

(viii) Affordable Housing Needs Score: To encourage development in communities with the highest identifiable housing needs, Applicants will receive the Affordable Housing Needs Score (AHNS) for the place or location of the Development site. The range of points is from 0 to 7. The AHNS list will be provided in the application materials.

(ix) Needs Assessment. Pursuant to 10 TAC §53.60(1), Applicants will receive 6 points if evidence is provided that the proposed Development meets the demographic, economic, and special need characteristics of the population residing in the target area and the need that the HOME program is designed to address, using qualitative and quantitative information, market studies, if appropriate, and other source documentation as delineated in the application guidelines, which are part of the application materials.

(x) Program Design. Pursuant to 10 TAC §53.60(2), Applicants will receive 6 points if evidence is provided that the proposed Development meets the needs identified in the needs assessment, whether the design is complete and whether the Development fits within the community setting. Information required includes, but is not limited to: community involvement; support services and resources; scope of program; income and population targeting; marketing, fair housing and relocation plans, as applicable.

(xi) Capability of Applicant. Pursuant to 10 TAC§53.60(3), Applicants will receive 6 points if evidence is provided that the Applicant has the capacity to administer and manage the proposed program/Development, demonstrated through previous experience either by the Applicant, cooperating entity or key staff (including other contracted service providers), in program management, property management, acquisition, rehabilitation, construction, real estate finance counseling and training or other activities relevant to the proposed program, and the extent to which Applicant has the capability to manage financial resources, as evidenced by previous experience, documentation of the Applicant or key staff, and existing financial control procedures.

(11) Financial Feasibility. Pursuant to 10 TAC §53.60(4), applicants will receive 6 points if supporting financial data provided by the Applicant and third party reports submitted with the Application indicates that the Development will be financially feasible.

(10) Tie Breakers

(a) Pursuant to 10 TAC §53.59(c)(4), in the event that two or more Applications receive the same number of points in the Rural Regional Allocation or Urban/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for an award. The Department may also recommend a partial funding recommendation.

(i) Affordable Housing Needs Score. The Affordable Housing Needs Score (AHNS) for the place or location of the Development site will be used as the first tie breaker criteria. The AHNS represents up to 7 points.

(ii) Long-term Feasibility. The second tie breaker criteria will be average debt coverage ratio calculated on the Applicant's originally submitted proforma. The Applicant with the highest average debt coverage ratio over the period of time represented in the proforma will win the tie breaker.

(11) Submission and Review Process

(a) All Applications submitted under this NOFA must be received on or before 5:00 p.m. on March 1, 2007. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. The Department will publish a list of all Applications received, organized by region and sub-region, on or before March 15, 2007. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, Scoring and Financial Feasibility, in accordance with §53.60 of the HOME Rule and as stated in Section 9(c) of this NOFA.

(b) All applications must be submitted, and provide all documentation, as described in this NOFA and the 2007 Final Application Submission Procedures Manual (ASPM), which will be updated after this NOFA is final.

(c) Pursuant to 10 TAC §53.58(c), if an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not cured to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the Application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an Application in any manner after the filing deadline, except in response to a direct request from the Department.

(d) Pursuant to 10 TAC §53.59(3), a site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not

obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

(f) Pursuant to 10 §53.59(c)(4) and (5), Applicants will be notified of their score in writing no later than seven calendar days after all Applications received have been scored. Should an Activity not have enough qualified Applicants, the funds will be redirected to the next Activity and geography type in the region that had a higher number of qualified Applicants. If sufficient Applications are not received in a region, any remaining funds will be redirected to the region with the highest number of qualified Applicants. Applicants may also receive a partial recommendation for funding. A minimum award amount may be established to ensure feasibility. Subsequently, recommendations for funding will be made available on the Department's website at least seven calendar days prior to the Board meeting at which the awards may be awarded.

(g) In accordance with §2306.082, Texas Government Code and 10 TAC §53.58(d), it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(h) Pursuant to §2306.1112 and §2306.6731 of the Texas Government Code, after eligible Applications have been evaluated, ranked and underwritten in accordance with this NOFA, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial.

(i) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(12) Application Submission

(a) Application materials must be organized and submitted in the manner detailed in the 2007 Final ASPM for rental developments. Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

(b) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

(c) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(d) Applications must be sent via overnight delivery to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200606848
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 20, 2006

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Notice of Funding Availability (NOFA) Preservation and Rental Development Competitive Application Cycle

HOME Investment Partnerships Program

(1) Summary

(a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $5,000,000 in federal funding from the HOME Investment Partnership Program (HOME) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10, Texas Administrative Code (10 TAC), Chapter 53 ("HOME Rules"), in effect at the time the NOFA is released, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code.

(2) Allocation of HOME Funds

(a) These funds are made available through the annual federal allocation of HOME funds to the Department. All funds released under this NOFA are to be used for the creation of affordable rental housing for

low-income Texans earning 80 percent or less of the Area Median Family Income (AMFI).

(b) Approximately $2,000,000 of these funds are specifically targeted for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining $3,000,000 in funds will be available to all eligible Applicants for rental development activities.

(c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

(d) Pursuant to §2306.111(d) of the Texas Government Code, funding will be awarded on a competitive basis to all urban/exurban areas and rural areas (sub-regions) of each uniform state service region based on the regional allocation formula developed by the Department. If the Department determines under the formula that an insufficient number of eligible Applications have been submitted in a particular uniform state service region, the Department shall use the unused funds allocated to that region for all urban/exurban areas and rural areas in other uniform state service regions based on identified need and financial feasibility. Any available fund balances not requested in response to this NOFA by the March 1, 2007 deadline will be made available through a subsequent open application NOFA to be released in April 2007. The availability of funds to each state service region and sub-region are listed in Tables 1 and 2.

Table 1. HOME Preservation Regional Allocation, by region and sub-region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/ Exurban Funding Amount	Urban/ Exurban Funding %
1	Lubbock	$128,051	6%	$128,032	100%	$20	0%
2	Abilene	$89,284	5%	$86,887	98%	$2,397	2%
3	Dallas/Fort Worth	$319,575	18%	$107,985	28%	$211,590	72%
4	Tyler	$251,252	12%	$221,391	88%	$29,861	12%
5	Beaumont	$118,878	6%	$104,504	85%	$14,374	15%
6	Houston	$142,443	7%	$63,124	45%	$79,319	55%
7	Austin/Round Rock	$85,225	4%	$45,726	55%	$39,498	45%
8	Waco	$70,234	3%	$43,075	62%	$27,160	38%
9	San Antonio	$112,050	6%	$85,683	78%	$26,367	22%
10	Corpus Christi	$153,716	7%	$103,408	82%	$50,307	18%
11	Brownsville/Harlingen	$373,262	18%	$221,895	66%	$151,367	34%
12	San Angelo	$113,260	5%	$43,879	38%	$69,381	62%
13	El Paso	$42,770	3%	$28,629	64%	$14,141	36%
	Total	**$2,000,000**	**100%**	**$1,284,218**	**64%**	**$715,782**	**36%**

Note: Funds are limited only to Developments located outside of local HOME Participating Jurisdictions.

Table 2. HOME Rental Development Regional Allocation, by region and sub-region

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban/ Exurban Funding Amount	Urban/ Exurban Funding %
1	Lubbock	$192,077	6%	$192,047	100%	$29	0%
2	Abilene	$133,927	5%	$130,331	98%	$3,596	2%
3	Dallas/Fort Worth	$479,363	18%	$161,978	28%	$317,385	72%
4	Tyler	$376,878	12%	$332,087	88%	$44,791	12%
5	Beaumont	$178,317	6%	$156,756	85%	$21,561	15%
6	Houston	$213,665	7%	$94,687	45%	$118,978	55%
7	Austin/Round Rock	$127,837	4%	$68,590	55%	$59,247	45%
8	Waco	$105,352	3%	$64,612	62%	$40,740	38%
9	San Antonio	$168,074	6%	$128,524	78%	$39,550	22%
10	Corpus Christi	$230,574	7%	$155,112	82%	$75,461	18%
11	Brownsville/Harlingen	$559,893	18%	$332,842	66%	$227,051	34%
12	San Angelo	$169,890	5%	$65,818	38%	$104,072	62%
13	El Paso	$64,154	3%	$42,944	64%	$21,211	36%
	Total	**$3,000,000**	**100%**	**$1,926,327**	**64%**	**$1,073,673**	**36%**

Note: Funds are limited only to Developments located outside of local HOME Participating Jurisdictions.

(e) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low, and extremely low-income individuals and families. Award amounts are limited to no more than $3 million per development, pursuant to 10 TAC §53.54(2). The minimum HOME award may not be less than $1,000 per HOME assisted unit. The Maximum award may not exceed 90% of the total development costs. The remaining 10% of total Development costs must be in the form of loans or grants from private or public entities. The per-unit subsidy may not exceed the per-unit dollar limits established by United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD.

(f) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

(g) Funds will be awarded in accordance with the rules and procedures as set forth in the State HOME Program rules at 10 TAC §§53.50 - 53.63. The Department may, at its discretion and based upon review of the financial feasibility of the development, determine to award HOME funds as either a loan or as a grant. Loans cannot exceed amortization of more than 40 years.

(3) Eligible and Ineligible Activities

(a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.53(g) and §53.55 , which involve only the acquisition, rehabilitation, and construction of affordable rental developments.

(b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.56.

(c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ).

(d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

(4) Eligible and Ineligible Applicants

(a) The Department provides HOME funding from the federal government to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities, and units of local government.

(b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.53(b) of the Department's HOME rule; clarification for §53.53(b)(6) creates ineligibility with any requirements under 10 TAC §49.5(a) of this title, excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

(5) Affordability Requirements

(a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. At a minimum, at least 20% of HOME assisted units should be affordable to persons earning 50% or less than of the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

(b) Each development will have a two-tier affordability term.

(i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds, and affordability.

(ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The

second tier, or remaining term, is subject only to state regulations and affordability requirements.

(c) Properties will be restricted under a Land Use Restriction Agreement ("LURA") or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

(6) Match Requirements

(a) Applicants will be required to submit documentation on all financial resources to be used in the Development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and will be provided with the appropriate forms and instructions on how to report eligible match.

(7) Site and Development Restrictions:

(a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements; and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401. When HOME funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards pursuant to 24 CFR §92.251(a)(1).

(c) Housing must meet the accessibility requirements at 24 CFR part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. 3601- 3619). Additionally, pursuant to the 2007 Qualified Allocation Plan (QAP), §49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e., one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

(d) Construction of all manufactured housing must meet the Manufactured Home Construction and Safety Standards established in 24 CFR part 3280. These standards pre-empt State and local codes covering the same aspects of performance for such housing. Participating jurisdictions providing HOME assistance to install manufactured housing units must comply with applicable State and local laws or codes. In the absence of such laws or codes, the participating jurisdiction must comply with the manufacturer's written instructions for installation of manufactured housing units. Manufactured housing that is rehabilitated using HOME funds must meet the requirements set out in paragraph (a)(1) of this section.

(e) All of the 2007 Qualified Allocation Plan and Rules 10 TAC §49.6, excluding subsections (d), (f), (g), and (h)

(f) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.53(f).

(8) Threshold Criteria

(a) Housing units subsidized by HOME funds must be affordable to low, very-low, or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

(b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37 of this title, pursuant to 10 TAC §53.53(i).

(c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

(d) Pursuant to 10 TAC §53.53(j), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

(i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

(ii) all neighborhood organizations whose defined boundaries include the location of the Development;

(iii) executive officer and Board President of the school district that covers the location of the Development;

(iv) residents of occupied housing units that may be rehabilitated, reconstructed, or demolished; and

(v) the State Representative and State Senator whose district covers the location of the Development.

(vi) The notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

(e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith pursuant to 10 TAC §53.53(k).

(ii) All contractors, consulting firms, and Administrators must sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions pursuant to §53.53(l).

(iii) all of 2007 Qualified Allocation Plan and Rules at 10 TAC §49.9(h), excluding subsections (4)(I), (11), (12) and (15).

(9) Selection Process

(a) Distribution. Awards will be made based on competitive scoring in each region by urban/exurban and rural designations. Awards will be made in each urban/exurban area and rural area (sub-region) until all funds are allocated in that sub-region. If the Department determines under the formula that an insufficient number of eligible Applications have been submitted for a particular uniform state service region, the Department shall use the unused funds allocated to that region for all urban/exurban areas and rural areas in other uniform state service regions based on identified need and financial feasibility.

(b) Scoring Criteria. Applicants may receive up to 156 points based on the scoring criteria listed below and must obtain a minimum score of 70 points to be considered for award. Evidence of these items must be submitted in accordance with the 2007 Final Application Submission Procedures Manual (ASPM), effective as of the date of issuance of this NOFA. Applicants must also select each item as part of their self score to receive points. The scoring criteria to be used are:

(i) HOME Applications Not Layered with Competitive Tax Credits: Applicants whose financial proposals do not include financing through the Department's 9% Competitive Housing Tax Credit Program will receive 30 points.

(ii) Leveraging of Public and Private Financing: To encourage the involvement of other public agencies and private entities in affordable housing, Applicants will receive 20 points if their HOME request represents less than 50% of the total development costs, or will receive 10 points if their HOME request represents less than 75% of the total development costs. Applications requesting 75% or more of the total development costs though a HOME award will receive no points. Applicants may use the estimated equity value of Housing Tax Credits in the calculation of leveraged financing.

(iii) Minimum HOME Subsidy: To maximize the impact that HOME funds have in developing affordable rental housing, Applicants will receive 20 points for HOME funding requests that do not exceed $20,000 in HOME funds per unit, or will receive 10 points for HOME funding requests that do not exceed $40,000 in HOME funds per unit. Home requests of $40,000 per unit or more will receive no points.

(iv) Extremely Low-Income Targeting. To encourage the inclusion of families and individuals with the highest need for affordable housing, Applicants will receive 10 points for proposed developments that provide at least 5% of units to families or individuals earning 30% or less of the area medium income for the Development site. Applicants will receive 20 points for proposed developments that provide at least 10% of units to families or individuals earning 30% or less of the area medium income for the Development site. The maximum number of points for this item is 20. Rents for these units targeting families or individuals earning 30% or less of the area medium income may not exceed the Department's 30% rent limits for the Housing Trust Fund and Housing Tax Credit programs.

(v) Matching Funds: To ensure that the Department continues to meet its federal obligation to provide matching funds under the HOME program, Applicants will receive 15 points for having at least 10% of their total development costs covered by eligible HOME matching financing, or will receive 10 points for having at least 5% of their total development costs covered by eligible HOME matching financing, as outlined in the application materials. Applicants with less than 5% of their total development costs covered by match financing will receive no points.

(vi) Location of Development: To encourage the creation of rental housing in communities where affordable units may not already exist, Applicants will receive 10 points for Developments that are located in Cities or Places that have no other affordable rental developments that have received funding from the Department.

(vii) Cost-Effectiveness of a Proposed Development: To encourage reasonable and cost effective building strategies, Applicants will receive 10 points for Developments that do not exceed $70 per square foot for new construction and $38 per square foot for rehabilitation. This figure will be calculated by dividing the total residential development costs by the total development square footage (included common areas). These numbers are the targets the Department currently uses for its Performance Measures.

(viii) Affordable Housing Needs Score: To encourage development in communities with the highest identifiable housing needs, Applicants will receive the Affordable Housing Needs Score (AHNS) for the place or location of the Development site. The range of points is from 0 to 7. The AHNS list will be provided in the application materials.

(ix) Needs Assessment. Pursuant to 10 TAC §53.60(1), Applicants will receive 6 points if evidence is provided that the proposed Development meets the demographic, economic, and special need characteristics of the population residing in the target area and the need that the HOME program is designed to address, using qualitative and quantitative information, market studies, if appropriate, and other source documentation as delineated in the application guidelines, which are part of the application materials.

(x) Program Design. Pursuant to 10 TAC §53.60(2), Applicants will receive 6 points if evidence is provided that the proposed Development meets the needs identified in the needs assessment, whether the design is complete and whether the Development fits within the community setting. Information required includes, but is not limited to: community involvement; support services and resources; scope of program; income and population targeting; marketing, fair housing, and relocation plans, as applicable.

(xi) Capability of Applicant. Pursuant to 10 TAC §53.60(3), Applicants will receive 6 points if evidence is provided that the Applicant has the capacity to administer and manage the proposed program/Development, demonstrated through previous experience either by the Applicant, cooperating entity, or key staff (including other contracted service providers), in program management, property management, acquisition, rehabilitation, construction, real estate finance counseling and training, or other activities relevant to the proposed program, and the extent to which Applicant has the capability to manage financial resources, as evidenced by previous experience, documentation of the Applicant or key staff, and existing financial control procedures.

(xii) Financial Feasibility. Pursuant to 10 TAC §53.60(4), Applicants will receive 6 points if supporting financial data provided by the Applicant and third party reports submitted with the Application indicates that the Development will be financially feasible.

(10) Tie Breakers

(a) Pursuant to 10 TAC §53.59(c)(4), in the event that two or more Applications receive the same number of points in the Rural Regional Allocation or Urban/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for an award. The Department may also recommend a partial funding recommendation.

(i) Affordable Housing Needs Score. The Affordable Housing Needs Score (AHNS) for the place or location of the Development site will be used as the first tie breaker criteria. The AHNS represents up to 7 points.

(ii) Long-term Feasibility. The second tie breaker criteria will be average debt coverage ratio calculated on the Applicant's originally submitted proforma. The Applicant with the highest average debt coverage ratio over the period of time represented in the proforma will win the tie breaker.

(11) Submission and Review Process

(a) All Applications submitted under this NOFA must be received on or before 5:00 p.m. on March 1, 2007. The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. The Department will publish a list of all Applications received, organized by region and sub-region, on or before March 15, 2007. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, Scoring and Financial Feasibility, in accordance with §53.60 of the HOME Rule and as stated in §9(c) of this NOFA.

(b) All applications must be submitted, and provide all documentation, as described in this NOFA and the 2007 ASPM.

(c) Pursuant to 10 TAC §53.58(c), if an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or scoring documentation. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. If Administrative Deficiencies are not cured to the satisfaction of the Department within five business days of the deficiency notice date, then five points shall be deducted from the Application score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. An Applicant may not change or supplement an Application in any manner after the filing deadline, except in response to a direct request from the Department.

(d) Pursuant to 10 TAC §53.59(3), a site visit will be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(e) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

(f) Pursuant to 10 TAC §53.59(c)(4) and (5), Applicants will be notified of their score in writing no later than seven calendar days after all Applications received have been scored. Should an Activity not have enough qualified Applicants, the funds will be redirected to the next Activity and geography type in the region that had a higher number of qualified Applicants. If sufficient Applications are not received in a region, any remaining funds will be redirected to the region with the highest number of qualified Applicants. Applicants may also receive a partial recommendation for funding. A minimum award amount may be established to ensure feasibility. Subsequently, recommendations for funding will be made available on the Department's website at least seven calendar days prior to the Board meeting at which the awards may be awarded.

(g) In accordance with §2306.082, Texas Government Code and 10 TAC §53.58(d), it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants and other interested persons to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

(h) Pursuant to §2306.1112 and §2306.6731 of the Texas Government Code, after eligible Applications have been evaluated, ranked and underwritten in accordance with this NOFA, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial.

(i) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

(12) Application Submission

(a) Application materials must be organized and submitted in the manner detailed in the 2007 Final ASPM for rental developments. Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2007 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2007 Final ASPM.

(b) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department and cannot be altered or modified and must be in final form before submitting them to the Department.

(c) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check, or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

(d) Applications must be sent via overnight delivery to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Preservation and Rental Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200606847
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 20, 2006

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of CHARTERED MARKETING SERVICES, INC., a foreign third party administrator. The home office is ARLINGTON HEIGHTS, ILLINOIS.

Application to change the name of GE GROUP ADMINISTRATORS, INC. to GENWORTH ADMINISTRATORS, INC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200606845
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 20, 2006

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Texas Department of Insurance, Division of Workers' Compensation

Correction of Error

The Texas Department of Insurance, Division of Workers' Compensation adopted a new rule, 28 TAC §102.11, in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10310). The department inadvertently omitted the final comment and agency response from the preamble of the adopted rulemaking notice. The following paragraphs should have been included on page 10312, first column, before the paragraph that begins "For with changes. . .":

Subsection (i), Claim data requests

Comment: A commenter recommends the division pend and redetermine a match of a record for each covered individual which has been submitted in previous Claim Data Requests.

Agency Response: The Division disagrees with this recommendation because matching this is a technical issue more appropriately addressed in the implementation guide rather than the rule.

TRD-200606797

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Texas Department of Licensing and Regulation

Public Notice - Revised Enforcement Plan

The Texas Commission of Licensing and Regulation ("Commission") provides this public notice that, at their regularly scheduled meeting held December 6, 2006, the Commission adopted the Texas Department of Licensing and Regulation's ("Department") revised enforcement plan which was established in compliance with Texas Occupations Code, §51.302(c).

The enforcement plan gives all license holders notice of the specific ranges of penalties and license sanctions that apply to specific alleged violations of the statutes and rules enforced by the Department. The enforcement plan also presents the criteria that are considered by the Department's Enforcement staff in determining the amount of a proposed administrative penalty or the magnitude of a proposed sanction.

Acts of the 79th Texas Legislature, Senate Bill 411, transferred the functions of the Texas Cosmetology Commission and the Texas State Board of Barber Examiners to the Texas Department of Licensing and Regulation effective September 1, 2005 and abolished both the Texas Cosmetology Commission and the Texas State Board of Barber Examiners. The Department's revised enforcement plan includes penalty matrices for Barbers, Barbershops, Barber Schools, Cosmetologists, Cosmetology Salons, and Cosmetology Schools.

The enforcement plan is revised to update penalty matrices for the Barbers, Barbershops, Barber Schools, Cosmetologists, Cosmetology Salons, and Cosmetology Schools to make them consistent with the rules that were adopted effective August 1, 2006. In making these updates, there were no changes made to the ranges of penalties or the ranges of sanctions that are available for the different classes of violations. This update removes obsolete provisions, adds new provisions that were added to the rules adopted effective August 1, 2006, and reorders ci-

tations to make them consistent with the current rules and easier to cross-reference.

A copy of the revised enforcement plan is posted on the Department's website and may be downloaded at www.license.state.tx.us. You may also contact the Enforcement Division at (512) 463-2906 or by e-mail at enforcement@license.state.tx.us to obtain a copy of the revised plan.

TRD-200606785
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 18, 2006

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Texas Lottery Commission

Instant Game Number 771 "Big Money Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 771 is "BIG MONEY BINGO". The play style is "bingo with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 771 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 771.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, 1X SYMBOL, 2X SYMBOL, 3X SYMBOL and 5X SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 771 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
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N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
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G59	
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62	
63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
1X SYMBOL	PRIZE
2X SYMBOL	PRIZE
3X SYMBOL	PRIZE
5X SYMBOL	PRIZE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 771 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,000, $5,000, $20,000 or $50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (771), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 771-0000001-001.

L. Pack - A pack of "BIG MONEY BINGO" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be : the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BIG MONEY BINGO" Instant Game No. 771 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BIG MONEY BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 181 (one hundred eighty-one) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 6 that match the Bingo Numbers and Bonus Numbers on the CALLER'S CARD. Each CARD has a corresponding prize legend. Players win by matching those same numbers on the six Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend

of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card, the player wins prize according to the legend of the respective playing card. In the PRIZE MUTIPLIER play area, if a player reveals a "2X", "3X" or "5X" play symbol, any prize won on Cards 1 through 6 is multiplied by that amount. The player can win up to six times on any ticket but only once on each "card". No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 181 (one hundred eighty-one) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 181 (one hundred eighty-one) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 181 (one hundred eighty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 181 (one hundred eighty-one) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within in a pack will not have identical patterns.

B. A ticket will win as indicated by the prize structure.

C. A ticket can win up to six times and only once per Card.

D. There will never be more than one win on a single Player's Card.

E. The highest prize won per card will be paid.

F. No duplicate numbers will appear on the CALLER'S CARD.

G. No duplicate numbers will appear on each individual Player's Card.

H. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

I. Each Player's Card on the same ticket must be unique.

J. The 24 CALLER'S CARD numbers and 6 BONUS NUMBERS will match 53 to 83 numbers per ticket.

K. The 'near wins' are to be distributed approximately equally in the six Player's Cards.

L. There will be at least one (1) 'near win' on each of the six (6) Player's Cards on each non-winning ticket.

M. A 'near win' is one number short of a complete horizontal, vertical, diagonal line or 4 corners, except for the 'X' where there are two numbers less, one in each diagonal line (one of which must be a corner).

N. The play symbols "1X", "2X", "3X" and "5X" will be used in the PRIZE MULTIPLIER area.

O. The play symbols will be used on winning tickets only as per the prize structure.

P. The "1X" symbol will be used on winning tickets when the prize is not multiplied, as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY BINGO" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and,

if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $30.00, $40.00, $50.00, $75.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY BINGO" Instant Game prize of $1,000, $2,000, $5,000, $20,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BIG MONEY BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BIG MONEY BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BIG MONEY BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 771. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 771 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,072,000	7.50
$10	536,000	15.00
$15	321,600	25.00
$20	107,200	75.00
$25	72,360	111.11
$30	40,200	200.00
$40	23,450	342.86
$50	28,140	285.71
$75	14,070	571.43
$100	6,700	1,200.00
$200	5,025	1,600.00
$500	1,943	4,137.93
$1,000	28	287,142.86
$2,000	14	574,285.71
$5,000	17	472,941.18
$20,000	7	1,148,571.43
$50,000	6	1,340,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.61. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 771 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 771, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200606841
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: December 20, 2006

♦ ♦ ♦

Instant Game Number 773 "Lucky Dog Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 773 is "LUCKY DOG DOUBLER". The play style is "match 3 of 6 with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 773 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 773.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500, $1,000 and BONE SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 773 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
BONE SYMBOL	DBLR

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 773 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
FIV	$5.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $50.00 or $100.

I. High-Tier Prize - A prize of $1,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (773), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 773-0000001-001.

L. Pack - A pack of "LUCKY DOG DOUBLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "LUCKY DOG DOUBLER" Instant Game No. 773 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "LUCKY DOG DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six)

Play Symbols. If a player reveals three (3) matching dollar amounts play symbols, the player wins that amount. If a player reveals two (2) matching dollar amounts play symbols and a "bone" play symbol, the player wins double that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain four or more matching symbols.

C. No ticket will contain three or more matching symbols when the doubler symbol appears.

D. The doubler symbol will appear only on winning tickets as dictated by the prize structure.

E. No two or more pairs of matching play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY DOG DOUBLER" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "LUCKY DOG DOUBLER" Instant Game prize of $1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "LUCKY DOG DOUBLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the

claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "LUCKY DOG DOUBLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "LUCKY DOG DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 773. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 773 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,392,000	8.62
$2	768,000	15.63
$4	240,000	50.00
$5	96,000	125.00
$10	96,000	125.00
$20	24,000	500.00
$40	15,000	800.00
$50	6,450	1,860.47
$100	3,700	3,243.24
$1,000	100	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.54. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 773 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 773, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200606842
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: December 20, 2006

♦ ♦ ♦

Public Comment Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §402.603, relating to Bonds or Other Security; proposed new 16 TAC §402.305, relating to Progressive Bingo; proposed amendments to 16 TAC §402.300, relating to Pull-Tab Bingo; and proposed amendments to 16 TAC §402.400, relating to General Licensing Provisions, will be held on Thursday, January 18, 2007, at 9:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. If necessary, the public hearing will be continued at 9:00 a.m. on January 19, 2007. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200606659
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 13, 2006

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Public Comment Hearing

A public hearing to receive public comments regarding the proposed repeal of 16 TAC §401.307, relating to "Pick 3" On-Line Game Rule, proposed new 16 TAC §401.307, relating to "Pick 3" On-Line Game Rule, and proposed new 16 TAC §401.316, relating to "Daily 4" On-Line Game Rule, will be held on Thursday, January 11, 2007, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200606673
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: December 14, 2006

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Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 11, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Incorporated for an Amendment to a State-Issued Certificate of Fran-

chise Authority, Project Number 33592 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33592.

TRD-200606756
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

♦ ♦ ♦

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 11, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Friendship Cable of Texas, Incorporated, doing business as Cebridge Connections, for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33593 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33593.

TRD-200606757
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 12, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Marcus Cable Associates, LLC, doing business as Charter Communications, for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33600 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33600.

TRD-200606760
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 12, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Charter Communications VI, LLC, doing business as Charter Communications, for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33601 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33601.

TRD-200606761
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 13, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33619 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33619.

TRD-200606828
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 14, 2006, to amend a state-issued certificate of

franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC d/b/a North Cable Television and Northland Cable TV for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33625 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33625.

TRD-200606829
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 12, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Hwy 3 MHP, LLC, doing business as Smart Choice Power, for Retail Electric Provider (REP) certification, Docket Number 33607 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 8, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33607.

TRD-200606758
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 12, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Sure Electric, LLC for Retail Electric Provider (REP) certification, Docket Number 33608 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 8, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33608.

TRD-200606759
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 15, 2006

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 13, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Ambridge Energy LLC for Retail Electric Provider (REP) certification, Docket Number 33620 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 8, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33620.

TRD-200606830
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 13, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of TexRep1 for Retail Electric Provider (REP) certification, Docket Number 33616 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-

782-8477 no later than January 8, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936- 7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33616.

TRD-200606831
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on December 19, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on December 29, 2006.

Docket Title and Number: Application of Kerrville Telephone Company for Approval of LRIC Study for New Business Packages Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33658.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33658. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33658.

TRD-200606833
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on December 19, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on December 29, 2006.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for New Business Packages Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33659.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33659. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33659.

TRD-200606834
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Notice of Petition for Waiver of Denial of Request for Additional Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on December 14, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P. d/b/a AT&T Texas' (AT&T) request for one thousand-block in the Pinehurst rate center.

Docket Title and Number: Request for Waiver of Denial of Numbering Resources--Pinehurst Rate Center. Docket Number 33637.

The Application: The Pinehurst rate center has an optional two-way extended metropolitan service (EMS) calling plan that requires a dedicated NPA/NXX to ensure proper routing. The Pinehurst rate center inventory of non-EMS numbers is almost exhausted, thereby requiring additional non-EMS numbering resources.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 10, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33637.

TRD-200606832
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 19, 2006

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Texas State Soil and Water Conservation Board

Request for Proposal

INTRODUCTION

This document provides instructions and guidance for applicants seeking funding under the Clean Water Act (CWA) §319(h) grant program in Texas. The U.S. Environmental Protection Agency distributes funds appropriated by Congress annually to the Texas State Soil and Water Conservation Board (TSSWCB) under the authorization of §319(h) of the Clean Water Act. TSSWCB then administers/awards these federal funds as grants for activities that address the goals and objectives stated in the Texas Nonpoint Source Management Program Report. This document can be accessed online at: *http://www.tsswcb.state.tx.us/reports/2005mgmtprogram.pdf*.

The types of agricultural/silvicultural NPS activities that can be funded with §319(h) grants include the following: implementation of watershed protection plans (WPP) and the nonpoint source portion of TMDL Implementation Plans, demonstrations, technical assistance, watershed planning, public outreach/education projects, development of watershed protection plans, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Research activities are not eligible for Section 319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the

boundaries of impaired or threatened watersheds as well as watershed protection projects in unimpaired watersheds. Up to $2 million of the TSSWCB's CWA §319(h) grant will be eligible for this RFP. Approximately $1.2 million will be targeted to Implementation and Education, $800,000 will be targeted to Watershed Planning and Assessment. No more than ten percent of this RFP can be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies or institutional approaches, use approaches that have statewide applicability, use comprehensive approaches, and stress public participation and technology transfer.

This request for proposals does not set a maximum or minimum amount for projects, however project funding generally ranges between $100,000 and $400,000. TSSWCB will administer funds to grantees by reimbursement for eligible expenses for a period not to exceed three (3) years. The non-federal share of the funding must be at least 40% of the total award.

Quarterly and final project reports are the minimum reporting requirements. Deliverables for general distribution (i.e., videos, news releases, literature) will be submitted to EPA for approval through the TSSWCB. All projects that include an environmental data collection component will include a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and EPA. Project budgets and timelines should account for the development and review of QAPPs accordingly.

TSSWCB PRIORITIES

For the FY2007 RFP, the following priorities have been identified:

Priority Project Activities

• Implement WPPs and TMDL I-Plans (See priority areas listed below)

• WPP Development Initiatives (See priority areas listed below)

• Support use of Farm Bill Programs

• Clarification of bacteria impairment in Category 5c waterbodies through Surface Water Quality Monitoring

Priority Areas for WPP and TMDL Implementation Projects

• WPPs

• Concho River

• Hickory Creek

• Pecos River

• Plum Creek

• Barton Springs

• Cedar Creek Reservoir

• Lower and Middle Brazos River

• Upper Colorado River

• TMDLs (approved)

• Lake O' the Pines (DO through Phosphorus)

• TMDLs (development)

• Adams and Cow Bayous (Bacteria and DO)

• Gilleland Creek (Bacteria)

• Guadalupe River above Canyon Lake (Bacteria)

• Matagorda Bay (Bacteria)

• Oso Bay and Creek (Bacteria)

• Upper Oyster Creek (Bacteria and DO)

• Upper Trinity River (Bacteria)

Priority Areas for WPP Development Initiatives

• Red River Basin (Basin 2)

• Exclusive of Buck Creek (Segment 0207A)

• Upstream and exclusive of Red River above Lake Texoma (Segment 0204)

• Exclusive of Red River (Segments 0206, 0205)

• Exclusive of Little Wichita River (Segments 0211, 0212, and 0213)

• Sabine River Basin (Basin 5)

• Upstream and exclusive of Toledo Bend Reservoir (Segment 0504)

• Neches River Basin (Basin 6)

• Upstream and exclusive of B.A. Steinhagen Lake (Segment 0603)

• Upstream and exclusive of Sam Rayburn Reservoir (Segment 0610)

• Colorado River Basin (Basin 14)

• Downstream and exclusive of O.H. Ivie Reservoir (Segment 1433)

• Upstream and exclusive of Lake Travis (Segment 1404)

• Exclusive of Pecan Bayou (Segments 1417, 1431, 1432, 1418, 1419, 1420)

• Inclusive of Pedernales River (Segment 1414)

• Nueces-Rio Grande Coastal Basin (Basin 22)

• Exclusive of Arroyo Colorado (Segments 2201 and 2202)

• Exclusive of Oso Bay and Creek (Segments 2485 and 2495A)

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local governments, educational institutions, non-profit organizations, and state agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria. A minimum scoring requirement (70 points) is necessary for proposals to be eligible for consideration.

Applicants whose proposals are recommended for funding will be notified and will be assigned to a TSSWCB project manager. The project manager will work with the applicant to amend and finalize the proposal prior to submittal to EPA. EPA will review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's proposal submission packet, please visit *www.tsswcb.state.tx.us/programs/319/fy07rfp.doc* or contact a member of the Nonpoint Source Team at (254) 773-2250. Submit proposals electronically to *thelton@tsswcb.state.tx.us* and mail 8 hardcopies to the address below. Proposals must be received no later than February 16, 2007 to be considered.

Address Proposals to:

Texas State Soil and Water Conservation Board

Attn: Nonpoint Source Team

P.O. Box 658

Temple, TX 76503

FY2007 GRANT TIMELINE

Issuance of RFP

December 18, 2006

Deadline for Submission of Proposals

February 16, 2007

Proposal Evaluation

February - March 2007

Notification of Selected Proposals/Unsuccessful Applicants

March - April 2007

Begin working with applicants to finalize Proposal

March - April 2007

Contract Award

July 2007

Project Start Date

September 2007

TRD-200606788
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: December 18, 2006

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Stephen F. Austin State University

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide inspection and budget forecasting for all educational and support facility roofs for a period of five years. The Notice of Availability was published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8780).

The contract was awarded to Global Roof Consultants, P.O. Box 1867, Whitney, Texas 76692, for an amount not to exceed $95,000 over the five year period.

The beginning date of the contract is December 1, 2006 and the ending date is November 30, 2011.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please call (936) 468-2206.

TRD-200606805
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 18, 2006

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will develop a project evaluation design in coordination with key project staff with input from collaborating partners. The Notice of Availability was published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9661).

The contract was awarded to Dr. Mariann V. Schmudde, 1230 Wright Circle #307, Celebration, Florida 34747, for an amount not to exceed $45,000 over a three year period.

The beginning date of the contract is December 14, 2006 and the ending date is September 30, 2009.

Documents, films, recording, or reports of intangible results may be presented by the outside consultant.

For further information, please call (936) 468-2904.

TRD-200606807
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 18, 2006

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Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this supplemental notice of consultant contract award. The original notice of award for the contract awarded to Maren Systems, LLC, 14101 Highway 290 West, Suite 500A, Austin, TX 78737, was filed in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7763). The Notice of Availability was filed in the July 28, 2006, issue of the *Texas Register* (31 TexReg 6145). The contract has been transferred to Radiant RFID, LLC, 12316 Pleasant Hill Court, Austin, TX 78738 for an amount not to exceed $48,000.

The beginning date of the contract is December 1, 2006 and the ending date is December 1, 2008.

Documents, films, recording, or reports of intangible results will not be presented by the outside consultant.

For further information, please call (936) 468-4157.

TRD-200606838
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: December 19, 2006

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Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the development, management, and administration of a Title V Grant.

Project Summary: Sul Ross State University is applying for a federally funded Title V grant for the Rio Grande College in partnership with Southwest Texas Junior College and the school districts of Del Rio, Eagle Pass, and Uvalde. Central to the partnership is the focus on student achievement to provide K-12 students with the academic rigor necessary to be prepared for college upon high school graduation. The fund-

ing period will run from 2007 through 2012. Phase 1 will focus on the creation of Higher Education Centers at the high schools designed to be student and parent centered one-stop information and service centers with the purpose to advance college going rates among all high school students. The parental component will link parents to school services and deliver information on higher education to the community via non-traditional methods such as home visits and existing neighborhood associations in informal educational dialogues. Phase 2 is the creation of Reading Corners-literacy centers throughout the three communities. The centers will be run by parent volunteers and will house libraries, computer stations, and tutoring services to engage both parent and student in the importance of literacy. Phase 3 is the creation of Science and Math Academies (SMAs). The Academies are academic enrichment programs and are collaborative efforts among the three educational entities to provide students additional math and science instruction. RGC math/science students will work along with teachers to assist students with their homework and serve as coaches to the students. In addition to assisting with grant development, the successful vendor will share in the responsibility for assurance of the attainment of the grant objectives and compliance with the terms and conditions of the grant and will provide services such as assistance in budget management, consultations, performance reporting, and review and editing of reports. Similar services have previously been provided by a consultant. Sul Ross State University intends to award the contract for the consulting services to a previously used consultant unless a better offer is received.

In accordance with the provisions of Texas Government Code, §2254.028(c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:45 p.m. Monday, January 29, 2007. A copy of the request for proposal packet is available upon request from Patty Roach, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar grant projects, and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-200606781
Patty Roach
Director of Purchasing
Sul Ross State University
Filed: December 18, 2006

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Texas State University-San Marcos

Contract Renewal

Texas State University agrees to renew the contract agreement with The Advocacy Group paying the consultant $5,896.80 per month, due on or before the 1st day of each month commencing January 1, 2007.

In addition, Texas State University will pay Consultant's actual out-of pocket expenses, provided that all such expenses shall be approved by Dr. Bill Covington on behalf of Texas State University and shall be substantiated by appropriate written receipts.

TRD-200606677
William A. Nance
Vice President for Finance and Support Services
Texas State University-San Marcos
Filed: December 15, 2006

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Texas Department of Transportation

Request for Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 223, (enabling legislation), the Texas Department of Transportation (department) may enter into comprehensive development agreements (CDA) for the design, development, construction, financing, maintenance, or operation of a toll project on the state highway system. The enabling legislation authorizes private involvement in toll projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.203 prescribes requirements for a solicited proposal, and requires the department to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which the proposals must be received. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, Subchapter A (the rules), governing the submission and processing of solicited proposals, and providing for publication of notice that the department is requesting qualifications submittals for development of a toll project with private involvement.

On March 30, 2006 by Minute Order 110469, the commission authorized the issuance of a request for qualifications to develop, design, construct, and potentially maintain, SH 114 from SH 114L Business to east of International Parkway and SH 121 from FM 2499 to SH 360 (the SH 114/SH 121 corridor), including tolled managed lanes along SH 114 from east of FM 1709 to east of International Parkway, as well as other facilities to the extent necessary for connectivity, mobility, safety, and financing (project), through a CDA.

Through this notice, the department is seeking qualifications submittals (QS) in response to a request for qualifications (RFQ) for the project. The department intends to evaluate any QS received and may request submission of a proposal, potentially leading to negotiation, award, and execution of a CDA. The department will accept for consideration any QS received in accordance with the rules by the due date for responses. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a CDA for the project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications, and legal qualifications, and relative strength, feasibility, and desirability of the proposed conceptual project development plan. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on December 29, 2006. Copies of the RFQ will be available at the Texas Department of Transportation, 2501 Southwest Loop at McCart, Fort Worth, Texas 76133, and at the Texas Department of Transportation office located at 125 East 11th

Street, 5th Floor, Austin, Texas 78701, or on the following website: **http://www.dot.state.tx.us/services/texas_turnpike_authority/default.htm**. QSs will be due on April 17, 2007 at the time and address specified in the RFQ.

TRD-200606818

Bob Jackson
General Counsel
Texas Department of Transportation
Filed: December 19, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).